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THE FISCAL OUTLOOK AND THE COORDINATION OF PUBLIC REVENUES

THE present fiscal situation is characterized by two urgent problems. In federal finance the vital question is that of balancing the budget, by the reduction of expenditures, by the increase of revenues, or by a combination of the two. In state and local finance the pressing problem is that of diminishing the tax burden on real estate, the position of which has become exceedingly difficult in the face of a fall of capital values not met by a corresponding reduction of assessed values. These two problems are interwoven. In their anxiety to find additional revenues both state and federal governments are beginning to overlap and to trench upon each other's fields. So far as the individual citizen is concerned, the burden is a composite one, to be treated as a whole. It will conduce to clearness, however, if we make a separate approach to the tangled situation. We shall therefore first treat the federal problem independently and then consider the question of the relation of federal and state revenues, with an especial eye to the tax on real estate.

I. The Federal Situation

A thorough discussion of the federal situation would involve two fundamental topics: What is the actual deficit? And how far can it be eliminated by a reduction of expenditures? The first problem would call for a study of several points which have often been overlooked, such as the distinction between current and capital outlays; the propriety of including in the budget the sums needed for the amortization or sinking of the debt; and the determination of the period to which the con-

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cept of a budgetary deficit should be referable. The second problem—that of a possible reduction of expenditures—is not only administrative, but political in character and involves considerations of outstanding social and economic importance. These two problems—the deficit and the reduction of expenditures—are of such paramount significance that their adequate treatment must be reserved for another time and place. The topic which engages our attention here is a different one—that of the provision of adequate revenues. To whatever conclusion we may come as to the extent of the actual deficit or as to the practicability of slashing expenditures, it may be taken for granted that additional revenues will be needed, either immediately or in the near future.

How then shall these additional revenues be provided? The main lines in our history are familiar. For three-quarters of a century, with the exception of a few short interludes, the national government derived its support exclusively from the tariff and the proceeds of land sales. In the last quarter of the nineteenth century there were added the so-called internal revenues consisting almost entirely of taxes on liquors and tobacco. The first quarter of the present century, with the gigantic demands of the war and its aftermath, witnessed the resort to the income tax and the death duties. These in fact soon bore the brunt of the burden. The shift in emphasis from indirect to direct taxes was accentuated by the advent of prohibition and the disappearance of the taxes on liquor. Finally, the embarrassments of the depression period have resulted in a screwing up of the direct taxes—on incomes and estates—to what many consider the highest practicable limit and, on the other hand, in the addition of various excises.

A growing opinion is to the effect that if more revenues are needed there is only one alternative of consequence, namely, a sales tax. Not a few of those who were originally determined opponents of that tax are now reluctantly coming to the conclusion that it is after all inevitable. Is this conclusion justified?

In the state of mind which underlies this conclusion there is without doubt a legitimate element. It is scarcely open to

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question that there is at bottom a problem of choice between direct and indirect taxes, that is, in the rough, between taxes on wealth and taxes on consumption. If our easy-going methods before the Civil War were content with sole reliance on indirect taxes in the shape of the tariff, it was largely because of the feeling that the balance was struck because of the almost complete dependence of state and local finance upon the general property tax. During the war we slipped almost unconsciously into substantial reliance for federal purposes upon the direct taxes, and especially upon the excess profits tax and the so-called income tax, which was in reality a combination of personal income tax and a business tax. In the succeeding years we did not always realize that what might be entirely proper for a system of war purposes was by no means so suitable for a permanent peace revenue. Although we dropped the war profits tax, we retained the income tax and largely reduced our internal revenue. While no one will be found to gainsay the proposition that government revenue even in peace times must be based largely upon ability to pay, few would deny that an almost exclusive reliance upon direct taxes is well-nigh as unjustifiable as an almost exclusive reliance upon indirect taxes. For obvious reasons which need not be discussed here, no country in the world has in its developed economic stage ever been able to aliment its revenues from direct taxes alone. Our present embarrassments make us realize that we also have now reached the point when our direct taxes need to be supplemented by indirect taxes. Does this desirable balance, however, between direct and indirect taxes necessarily mean a sales tax?

The demand for a general sales tax always arises in times of storm and stress. It seems too easy a way of escape from the difficulties of a given situation. Not to speak of the earlier episodes, we may refer to the eighteenth century movement for the general excise, which played a considerable rôle in England and a still more significant rôle on the Continent. In both places, however, the situation was finally adjusted without resort to what gradually came to be considered as an inequitable and undesirable form of taxation.

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In the discussion of a possible balance between direct and indirect taxes, it must not be forgotten that with the impending disappearance of prohibition, the wished-for result will in this country soon come almost of itself. About a year ago we took occasion to point out that we might normally expect a revenue of about one and a quarter billions from a tax on malt and spirituous liquors. If to this we add the well-nigh half-billion to be expected from tobacco and another half-billion from the normal customs duties, we have a revenue of well over two billions from indirect taxes alone. This ought to suffice for approximately one half of our normal federal expenditures. The question of a balance between direct and indirect taxes will therefore settle itself, to a very large extent, in the not distant future. The immediate problem, accordingly, is that of tiding over the interval before our liquor taxes can be put into force. Even for the immediate future, however, if we were willing to make the beer tax as high, for instance, as in Great Britain, about half a billion dollars could be obtained from this source alone.

The question then is this: Is it worth while, in order to tide over what may be expected to be only a comparatively short interval, to introduce new, untried and complicated forms of taxation with the inevitable resultant disturbances in our business and general economic life? Would it not be preferable to treat the deficit of these lean years just as we treated the surplus of the fat years? In other words, just as we used the surplus in large part to pay off our national debt at a rate considerably over and above the requirements of the sinking fund, so now we might, without fear of incurring substantial criticism, overcome the deficit by temporarily neglecting the sinking fund and adding to our debt. To utilize the national debt for purposes whether of temporary surplus or of temporary deficit is entirely legitimate. If correctly presented, such a method of financing ought not in the slightest degree to impair the national credit.

Suppose, however, that this project does not meet with favor and that it should be decided that we must at all costs balance the budget immediately by providing an additional revenue,

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even for temporary purposes. Even under this supposition it can be maintained that it does not follow that a general sales tax is inevitable.

In the first place, while it is perhaps true that we have raised the higher rates of the estate and the income taxes to the point of maximum productivity, must we conclude that we can do nothing more with the income tax? There are three points here which seem to have escaped attention.

The first is that considerable additional revenue could be secured by abolishing the exemption of state and federal securities. As we pointed out many years ago, the legal decisions which have fastened upon us the exemption of state securities from federal taxation were based upon economic fallacies and misunderstandings; and the exemption by the federal government of its own securities is both unnecessary and in the long run unjustifiable. So far as the latter point is concerned, the fiscal history of the French Revolution is instructive. After an exhaustive discussion of the subject by the statesmen of the period the abolition of that form of tax exemption followed the disappearance of the other immunities. Moreover we all remember the attempt made by Secretary Mellon a decade ago to bring about a similar situation in this country. His efforts were at the time frustrated by the unfortunate and belated emphasis upon states' rights. In the present situation, however, it is perhaps possible to secure a reconsideration of the problem.

Roughly speaking, there are now outstanding some thirty-three billions of state, local and national bonds. If we assume an average return of about four per cent, that would mean an interest charge of over one and a quarter billions. Inasmuch as these bonds are held not only by modest investors subject to normal income tax, but also by larger investors, some of whom would be liable to the maximum rates, it is not unreasonable to hazard the guess that the abolition of the immunity would subject the holders to a tax varying perhaps from fifteen to twenty per cent of the entire amount. If we take the latter figure, it would mean that the abolition of the exemption would ultimately net the government, even after making

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allowance for corporate held securities, over two hundred million dollars of additional revenue. Of course this figure would not be reached at once, not only because a constitutional amendment would be necessary, but also because some of the federal bonds do not now enjoy complete exemption and because it would probably be necessary to continue the exemption for the present holders of federal securities. But before long the additional revenue would be secured. It must indeed not be forgotten that the removal of the exemption will lead to a higher interest rate, so that the government will lose in that increased outlay a part of what it gains in augmented tax revenues. As has often been pointed out, however, the existence of the graduated scale will prevent anything like such an equivalence between income and outgo, so that there will remain a substantial revenue to the government. Is not this worth fighting for from the fiscal point of view? When we add to this a consideration of the equities of the case, the demand for reconsideration becomes even stronger.

In the second place considerable additional revenue might be secured from a modification of the provisions which permit for the purpose of the normal income tax the deduction of corporate dividends. This introduces a thorny subject which can be treated only cursorily here—namely, the difficult problem of corporate versus individual liability to the income tax. In actual practice throughout the world there is great confusion. Some countries tax either the corporation or the individual but not both; some governments tax both corporation and individual; some countries tax the corporation for normal tax only, but include dividends in the surtax or supertax assessed on the individual.

This difference of practice arises from the confusion of underlying theories. According to one theory income is a unit to be treated as a whole. The income of a corporation is the income of the shareholders. To tax the corporation is therefore to tax the shareholders, whose dividends ought accordingly to be exempt. Under certain conditions this theory is tenable. If the corporation tax is levied at the same pro-

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portional rate as the personal tax, it is immaterial whether the dividends are reached in the one way or the other. But in a graduated tax it is different. If, for example, both the corporate and the normal personal tax are five per cent, and if the individual's income from dividends would place him in the twenty per cent surtax bracket, it is clear that if only the corporation were taxed and dividends were exempt this would mean an indefensible privilege to the security owners. It is for this reason that the second method was adopted.

According to this method income is not treated as a whole, but is subject to partial separation. In both England and the United States the result is reached, although in different ways, that the corporation pays the normal tax while the stockholder pays the surtax or supertax. This method is defensible on the theory, accepted in England, that income is a purely personal, individual matter and that the collection of the normal tax from the corporation is a purely administrative device of reaching the income of the stockholder. But it is not defensible on the theory accepted in the United States, which recognizes the existence of a corporate income—a theory due largely to the fact that the "corporation excise" tax existed from 1909 to 1913 before the advent of the personal income tax.

This consequently leads to a third theory, which is at present only inadequately apprehended—the theory of complete separation. This theory regards the corporate tax as something entirely independent. A corporation tax is a tax on the corporation itself as an entity. If the tax on the individual is a personal tax, the tax on the corporation is a semi-personal tax. It may be defended legally as a tax paid for the corporate privilege or as a tax on business in the corporate form. A tax on business as such is something quite separate from a tax on personal income. Since the taxes are disparate phenomena, there is no need of any correlation between their rates and certainly no reason why the corporate tax should be deducted in whole or in part from the personal tax.

The conclusion to be drawn is that while in any event the deduction of dividends for supertax is unjustifiable, the

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legitimacy of deduction for normal tax depends on the decision whether it is the policy to have a business tax. Where, as in the United States, this question is virtually being answered in the affirmative, it would seem that the practice of New York state in counting dividends as income is more correct than that of the federal government. There is just as little reason for deducting dividends because corporations are taxed as there is for deducting the income from land because there is a land tax. The business or corporation tax like the land tax is a tax *in rem,* despite the fact that legally speaking the corporation is a fictitious person. The income tax is a personal tax on incomes from whatever source derived. The corporation tax like the land tax is only a semi-personal tax. The dividends of corporations in the United States grew from 4 billions in 1923 to over 8¼ billions in 1929. Even if we take the lower figure, it is clear that with the probably high normal tax which may be expected for the next few years the adoption by the federal government of the New York practice would result in additional revenues of several hundred million dollars.

In the third place, there is room for a still further modification of the income tax. The advocates of the sales tax base their argument largely on the ground that there ought to be a wider distribution of the tax burden and that the small man ought to bear his relative share. Conceding for a moment the strength of the general principle, it may be asked whether this objective of a wider distribution cannot be more adequately and equitably attained by a lowering of the personal exemption and by an increase in the rates on small incomes so as to approximate the figures that we find in the British and the Continental income taxes. It is not to be denied that there are serious and possibly convincing arguments against any such change taken by itself. But if the principle is adopted that the small man must pay more, is it not far better to do it in this way than by the adoption of a sales tax which is admittedly regressive and not consonant, as is the income tax, with the principle of ability to pay?

Thus in three separate ways the income tax can be so

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modified as to yield a far greater revenue: the abolition of the exemption of securities, the inclusion of dividends in taxable income and the reduction of the personal exemption—each one of these modifications would be not only lucrative but in accordance with sound principles.

Suppose, however, that all of these suggestions fail of adoption on the ground that the budgetary balance must be restored by increasing indirect rather than direct taxes. Are we even then to accept a sales tax?

In answering this question we must be careful to clarify our ideas as to what is meant by sales taxes. Every tax on consumption is in a certain sense a sales tax. Individuals who do not raise their own food and drink or produce all the raw materials needed for their consumption can secure these commodities only by purchase. But to call every tax on consumption a sales tax is a misnomer. Ordinary taxes on commodities are termed excises and are levied either at the period of production or at the time of original transfer. By a general sales tax, on the other hand, is meant a tax on each successive sale; it is a tax not on the commodity, but on the sale. A sales tax is not only regressive but cumulative, and it is only by a misuse of terms that it is confused with an excise or a tax on commodities which is paid once and for all. The tax on liquors and on tobacco has never been called a sales tax. Why should the other excises be so called?

If then we must have indirect taxes to supplement the direct taxes we not only have the whole field of taxes on acts and transactions—a source which has thus far been only lightly tapped by the federal government — but we have the entire domain of excise taxation over and above the imposts on liquors and tobacco. It is in this field that one great resource still remains available. The federal government has recently imposed for temporary purposes a tax on gasoline—perhaps one of the relatively least objectionable indirect taxes. For the gasoline tax, like the liquor and tobacco tax, possesses the advantage of being levied on what is in part a luxury and in part a necessity. A gasoline tax is not only imposed on an article of such widespread consumption that it is extraordi-

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narily lucrative, but it partakes in part at least of the character of voluntary and self-imposed taxation, the burden of which can be reduced at will. We must remember that every one cent tax per gallon of gasoline will net about 150 millions of dollars. We must also not forget that all over Europe and South America the price of gasoline is far higher than in this country even with federal and state taxes added. If we must have a temporary addition of several hundred millions to our revenue from indirect taxes, let us utilize first a steeper gasoline tax and then resort to a system of higher stamp taxes. It is only in the final emergency that we should then be reduced to an acceptance of the sales tax.

We see, therefore, that the fiscal outlook of the federal government is by no means so dark as it has been painted. Granted a determination to cut expenditures to the lowest possible limit, the deficit will in all likelihood not be so large as has been represented. Above all the problem is one of temporary urgency rather than of permanent significance. For temporary purposes it is not illegitimate to use the borrowing powers of government. Even if we must have additional revenues, these can be provided partly by a modification of the income tax, partly by the choice of relatively innocuous indirect taxes. The sales tax ought to remain as a last resort.

II. The Integration of Federal and State Revenues

The second urgent problem, as we have stated above, is that of state and local revenues, considered primarily from the point of view of the overtaxation of real estate. While the need of some relief is universally acknowledged, it is not always clearly recognized that, apart from the reduction of expenditures, a lowering of the real estate tax can be secured only by an increase of other existing taxes or by new additions to the tax system as a whole. As soon, however, as the states seek to augment their tax revenues, they are at once brought into conflict with a similar attempt on the part of the national government. The problem of lightening the burden of the taxpayer resolves itself, therefore, into some form of adjustment between federal and state revenue systems.

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In the early stages of our history this problem did not exist because of the principle of separation. This principle was to a certain extent imbedded in the Constitution through the provisions which reserve customs duties to the national government and which, through the direct tax clause, virtually reserve the general property tax to the states. Up to the Civil War this system worked satisfactorily. With the exception of the war with England and the Mexican War, the federal tax revenue during the nineteenth century was derived from import duties and the commonwealth needs were adequately met by the general property tax. With the growing necessities, however, on the part of both the nation and the states, this early period was gradually outgrown. Both the union and the states now began to dip into a common reservoir. With the attainment of this stage we reach the period of duplication of revenues. At first scarcely perceptible, this duplication became more and more pronounced in proportion as it became necessary to resort to inheritance taxes, to corporation taxes, to income taxes, and to various forms of indirect taxation. The competition which was thus engendered resulted not only in a waste of effort but in an accumulation of more or less unrelated and unconsidered burdens upon the individual, as well as in a growing embarrassment to the taxing authorities.

The present situation in the United States accordingly is a combination of the two systems of separation and duplication, each principle being applicable to a part of the field. It is because of the increasing difficulties of this situation that here, as in all other federal governments, a third method has now become necessary. This is due not so much to the failure of separation and duplication as to the need of restricting their operation to ever narrower limits.

It is, for instance, certain that the original separation of revenues will maintain itself to the extent that import duties will accrue only to the federal government and that the property tax, on real estate at least, will continue to be restricted to the states. With the advent of new forms of revenue, however, these separate taxes will form an ever dwindling pro-

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portion of the entire revenue. In the same way it will be difficult, even if it were desirable, to abolish every form of competition between state and nation. Such forms of duplication, however, even if they continue to exist, ought for obvious reasons to constitute a decreasing and not an increasing part of the whole.

It is clear, then, that while both separation and duplication of revenues may continue, in part at least, the field is open for an application of some form of mutual adjustment or adaptation which is best described as the integration of state and federal revenues. This integration implies some form of relation of the whole to the parts. Like so many other problems, philosophical as well as political, it calls for the creation of unity in multiplicity.

How, then, can fiscal integration be obtained? In order to prepare the way for a consideration of this problem it is important to emphasize four fiscal principles which are of the first importance from the point of view of the taxing authority, namely: suitability, adequacy, simplicity and elasticity.

The principle of suitability is of primary significance. The fitness or appropriateness of a tax depends, so far as the taxing authority is concerned, upon the economic basis of the tax and the character of the administration. Other things being equal, certain tax authorities are less fitted to achieve success than others. Take as an example a purely local income tax which is exceedingly difficult to administer in any village or town because of the virtual impossibility of localizing an individual's entire income, from whatever source derived. Take again an inheritance tax, which is plainly unsuitable for local purposes on the score of great variation in return. In a small town the death of a single rich individual may cause an immense oscillation in the local revenue. On the other hand, the value of a man's farm is quite adequately appreciated by his fellow farmers.

While the economic basis of the tax is important, the character of the administration must not be overlooked. There is, of course, no universal rule possible. But technical consideration will often lead to the preference for a particular admin-

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istrative organization. The balance of efficiency will sometimes swing in one direction, sometimes in the other. If we join the administrative considerations to those of the economic base it is clear that the principle of suitability must not be disregarded.

The second principle is that of adequacy. This is sometimes of commanding importance in both state and local governments. Owing to the provisions of the federal Constitution with reference to interstate commerce, it is obvious that certain forms of business taxation, for instance, will fail of complete success when administered by state or local authorities.

The third principle is that of simplicity. Other things being equal, the less complexity that we have in any system of mutual adjustments, the better the system will be. Any integration of public revenues which engenders uncertainty and complexity is to be deprecated. The system may be admirable in other respects, but if it fails here it is apt to create as many new difficulties as it will overcome.

The fourth principle is that of flexibility or elasticity. In the presence of great variations both in public needs and in the social income, it is necessary in devising any system of mutual adjustments as between state and nation, to provide for a degree of flexibility which will obviate difficulties and embarrassments that are otherwise sure to occur.

In considering any form of integration to replace the systems of separation or duplication, we must therefore be mindful of the four principles of suitability, adequacy, simplicity and flexibility. Some forms of integration will secure the one objective, some forms another. We must obviously give our preference to that kind of integration which will if possible realize all four objectives.

What then should be the character of the fiscal integration? It is clear that we have at the very outset to choose between two alternatives. We can achieve integration through either equality or inequality; in the endeavor to combine unity with multiplicity we may emphasize either the whole or the part. If, however, we overemphasize either the whole or the parts, we are subordinating the whole to the parts, or the parts to

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the whole. In other words, integration may take the form of subordination. As opposed to this method, which inevitably involves a certain inequality, we may seek to preserve, as far as possible, the equality between the whole and the part. This form of reciprocal adjustment may be termed coördination.

The history of fiscal relations between the whole and the part in every federal government affords abundant examples of the two methods of integration. But it has not always been clearly perceived that each of these methods, namely, subordination and coördination, has assumed different forms. Let us attempt to explain these possible variations and to consider the merits of each.

The simplest form of fiscal subordination is to have either the central or the local government supported by the other. We have had examples of both systems. Under the first Constitution of the United States the federal government possessed no independent sources of revenue. The nation had to be supported by grants from the various states under the name of requisitions, so called because the federal government made periodical requisitions upon the states. The failure of this system was largely responsible for the new Constitution with independent revenues for the union.

We find the same system, in part at least, almost a century later in the early years of the new German empire. While the imperial government did indeed possess certain independent sources of revenue, these were by no means adequate, and had to be supplemented by the system of grants from the states known as *Matricular-beiträge*.

Such a system of central subordination may have been endurable in the period of transition from the theory of state sovereignty, with only limited grants of power to the union. But it was bound to fail in proportion as the central government acquired more vitality and independence.

With the strengthening and growing importance of the central government we gradually find the shoe fitting the other foot. In the system of subventions the grants were now made from the central to the local rather than from the local to the central government.

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This system of central subventions first developed in Great Britain. Almost a century ago we find the beginning of the so-called grants-in-aid whereby the central government sought out of its abundant revenues to lighten the burden of the localities. A little later the Canadian constitution made it possible for the federation to assist the provinces which were still struggling to their feet. Toward the end of the century we observe the movement beginning in various American states, notably in New York, where an attempt was made to ease the burden of the local property tax through state action. At about the same time we have the first extensions of federal aid to the states which, beginning modestly with certain forms of agricultural education, later received a great impetus when applied to improved roads, as well as to other purposes.

Although it was not the original intention, the system of subventions and grants carried with it to a certain extent the possibilities of advice or even of control. While this has been carefully guarded in the United States, it remains true that to a certain extent at least there exists a degree of subordination. It is largely on this score that objection has sometimes been raised by the separate states to the system of federal grants. On the principle however, that it is not easy to look a gift horse in the mouth, there is slight likelihood of the system disappearing. But even at best, the system of federal grants with or without control will cover only a small part of the field. Some other form of integration will have to be found for most of the public revenues.

What must be sought, in other words, is not so much subordination as coördination. There are at least four ways in which this can be accomplished.

There may be in the first place a realignment of government functions. Although there is a more or less traditional assignment of functions to the various agencies local, state and federal, the shifting basis of economic life is gradually bringing about some alteration. This change is especially noticeable as between state and local governments. Recent decades have witnessed a decided drift toward centralization, partly for administrative, partly for economic reasons. We now have,

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for instance, a conspicuous increase in state hospitals of certain kinds. Again, in the case of roads as well as of schools, which form the chief object of local expenditures, there has been a marked acceptance of general and statewide standards, as a result of which a continually greater part of the local expenditures for these purposes has been transferred to the state government. There is room for a further development, which will carry with it a diminishing pressure upon the local property tax and an increasing reliance upon the state revenues which are being alimented by other sources. The coördination which has been brought about by changes in relative expenditure is just as effective as coördination brought about by analogous changes in government revenues.

While this method, however, has a decided future in the relations of state and localities, it is less promising in the relations of state and nation. It is true that there will probably be further progress in the construction of national highways within the states and it is even possible that there may be some future for certain additional forms of federal education. In the main, however, the outlook for changes of this kind is not promising. So far as state and nation are concerned, we can expect far less help from a realignment of government functions than in the case of states and localities. In the relations of the state and the nation we must look more particularly to revenues rather than to functions or expenditures.

The second method of coördination is illustrated by the existing system of credits. This ingenious plan was devised less than a decade ago in order to meet the problem of the death duties. Some of the states were becoming increasingly dependent upon the inheritance tax, while the proceeds of the federal estate tax were not only small in themselves but seemed to be of growing insignificance in the face of the great surplus of other revenues. It was therefore decided that when any one paid the federal estate tax he should be credited with so much of the tax—at first twenty per cent, later increased to eighty per cent—as might be payable to the state. The system of credits has worked so smoothly that the question arises why it is not susceptible of wider extension.

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There are, however, several reasons which lead us to doubt the expediency of such a general extension. In the first place it involves a certain amount of compulsion. In order to permit the existing credit, it is necessary that each state should not only levy death duties but possess a system virtually identical with that of the federal government. Some states did not have any death duties and a few were strongly averse to such taxes. Furthermore, many of the states had a different system, such as the inheritance tax or a tax on the shares of the inheritance. These states have now been compelled, partly against their will, to change the system to conform to that of the federal government. This consideration points to a weakness in the plan, if generalized. If an attempt were made to apply the credit system to the income tax or to the business tax or to any form of indirect tax, it would require every state to introduce that particular form of taxation. Such a compulsion might be far more unwelcome than was the adoption by the commonwealths of the estate tax. It might be unwelcome, either because that particular form of tax was not needed or because it might be unsuitable under the special conditions. In other words, the system of credits might introduce into the state revenue systems a degree of rigidity which is to be deprecated.

In the third place, the credit system would not lessen the duplication to which attention has been directed above. If it is wasteful to have both a state and a federal inheritance tax, it is still more wasteful to have both a state and federal income tax, or a state and federal business tax. With every extension of the credit system to the field of indirect taxation we should have a continually increasing waste. The higher the costs of collection the more pronounced would the objections be.

Finally, the extension of the credit system would involve all manner of complications. In the inheritance tax the situation is comparatively simple. Suppose, however, that the method were applied, let us say, to business or to corporation taxes. What kind of a state tax, paid by corporations, for instance, would entitle them to a credit? Some states have a corporate income tax, some a tax on corporate gross receipts,

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others subject corporations to the general property tax, and virtually everywhere corporations pay taxes upon their real estate to either the local or the state government. Which among all these various taxes would be considered in the system of credits? The whole subject bristles with difficulties which have not yet been faced.

If then we observe these four points: compulsion, rigidity, duplication and complication, it is clear that the credit system, while in many ways admirable, by no means affords a perfect solution of the problem.

We accordingly are led to a consideration of a third form of coördination, namely, that of division of the yield. This plan implies only a single and more comprehensive collecting agency, with a transfer of a part of the yield to the lesser divisions, in this case the states. The three great advantages of such a system are simplicity, economy and suitability.

It is obviously far more simple and more economical to have a single or unitary system than to be confronted by duplication with its accompanying wastefulness and extravagance. But of even greater importance is the consideration of suitability. The fitness or suitability of a tax depends in large measure, as we have seen above, upon the economic basis. It is chiefly for this reason that there has been such a development of the principle of division of yield as between state and locality. The taxes, whether imposed on corporations or mortgages or incomes or inheritances, have come more and more to be entrusted to the state authorities, while a portion of the proceeds has been allotted to the locality.

A somewhat similar line of argument has now come to be applicable to the relations of state and nation. Several decades ago we called attention to the growing difficulties that were being encountered in the levy of the state income taxes because of the problems of interstate commerce. Similar difficulties attach to the adequate state taxation of business, whether corporate or otherwise. The embarrassment would be still further accentuated in any attempt by the states to levy certain indirect taxes. The lack of success would show itself not only in the yield, but also in the matter of justice as among the tax-

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payers. With the extension and nationalization of our economic life, the arguments for a wider administrative basis become increasingly strong.

Finally, where the federal finance acquires a dominating position in the national economy, the pressure in favor of a unitary system becomes irresistible. This is the reason, for instance, why under the demands of reparation payments, the German fiscal system was revolutionized a few years ago, so that the national government has become the sole collecting agency, with a division of the yield to the states and with a further subdivision to the localities. Such a revolution, however, is unlikely in federal governments not exposed to similar contingencies. In the United States such a solution, even if desirable, would meet with almost insuperable obstacles.

As a matter of fact the system of division of yield, although in many respects preferable to the credit system, possesses certain weaknesses which must be weighed up against the advantages of simplicity, economy and suitability.

The first weakness is a certain degree of dependence. If the states were to abandon their chief sources of revenue and were to be supported out of the revenue collected by the federal government, there could not fail to be a growing sense of inferiority, which would naturally be distasteful. In the second place, there would be some measure of uncertainty, which would carry with it a degree of inelasticity. If only a definite part of the yield were allotted to the states, their share would naturally vary with the yield of the entire tax. This might change from year to year and that too in a direction opposite to what might be needed. It is conceivable, for instance, that there might be a federal surplus at the same time as a state deficit in a particular commonwealth, or vice versa. Under a strict application of a system there would be no provision for elasticity in state revenues.

In the third place we should have to face the problem of the criterion as to the division of revenues. This has already engendered not a little trouble within the separate states: the difficulties would be far greater in a federal system. Should the criterion of division be population, or wealth, or real estate,

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or a dozen other possible items? The complications here are well-nigh infinite.

On the whole, therefore, while the division of yield is a more satisfactory form of coördination than any of its predecessors that have been considered, the problem is not yet completely solved. The question still presents itself as to whether there is not some way of preserving the advantages of coördination while minimizing its shortcomings.

We venture to suggest that such a final and promising form of coördination is at all events possible and deserving of consideration. Such a system of coördination we should like to call that of supplements or additions.

Under a system of supplements the federal government would be primary collecting agent, but the state government would have the power to add supplements or additions of its own. Let us suppose, for instance, that the federal government imposed a personal income tax at such rates and under such conditions as to yield a definite revenue for federal purposes. If the state government now desired to secure a revenue from personal incomes, it would simply ask the federal government, in collecting the tax within the given state, to tack on such additional percentages as would be desired by the state in question. The individual taxpayer would pay only a single tax and the federal government would automatically turn over to the state the proceeds of the supplement or addition. If there were any constitutional objections to this procedure, they could easily be removed by having the taxpayer make out two copies of his report, one of which would make the modifications needed to meet possible constitutional objections, and arranging for the state to have a separate collecting office to receive the supplements.

The advantages of such a system are obvious. In the first place the objective of suitability would be attained; the tax, whether direct or indirect, would be collected by the agency economically and administratively most suitable. In the second place, there would be no element of subjection or compulsion. If the state did not desire that particular kind of revenue, it would not be compelled to adopt it. In the third

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place, there would be no duplication of taxes, and thus an immense saving in the cost of collection. In the fourth place we should possess an elasticity in the state revenues, because the state would be at entire liberty to arrange its supplement or additions in conformity with its particular needs. Finally, the state would still have quite enough fiscal problems of its own, not only in levying such taxes as would be relatively unsuitable for federal administration such as local license taxes and the like; but also in the supervision and control of the local revenues and especially of the real estate taxes.

Under the system of supplements the federal government would be performing two functions. It would act for itself in balancing its own budget and it would act as delegated agent of the states.

It must be conceded, indeed, that the system of supplements is not entirely without shortcomings. It is possible, for instance, that the varying interests of the separate states might justify a departure from the federal pattern of a particular tax. In an income tax, for instance, it might be desirable in a farming community to fix the limit of the personal exemption somewhat differently from that in an industrial state. Other variations in detail are conceivable. In the same way in the case of the death duties it might be desirable in the case of the state supplements to select some other criterion than that of the residence of the decedent which is observed in the federal tax. Such difficulties, however, could be overcome with relative ease in the elaboration of the system. Moreover, it must be remembered that there is no possible plan which presents only advantages without shortcomings of any kind. The most that can be expected of any system is to combine the greatest number of advantages with the smallest number of drawbacks. This, it might be claimed, will on the whole be most adequately realized by the system of supplements.

There are two great objects that are susceptible of attainment under this particular plan of coördination. The first is that the state will be in a position to lighten the load of the localities to any extent that seems desirable. By this flexible addition to its state revenues, it can utilize both the direct and the in-

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direct federal taxes to make up any deficiency that may be caused by the further assumption of local expenditures or by any increased allocation of state revenues to the localities. The alleviation of the local burden on real estate may then be effected in the light of general principles and of relative obligations.

In the second place the federal government in fixing the rates of the taxes, both direct and indirect, that are needed to balance its own budget, will do so with due consideration for the total combined rates resting on the individual taxpayer. This will undoubtedly lead to a spreading of the burden over a wider area, so that a due balance may be found between direct and indirect taxation. A survey of the entire situation cannot fail, with moderation and good will on both sides, to bring about a mutual adjustment, as workable as it is equitable.

We conclude, therefore, that in our search for a system of integration or reciprocal adjustment of public revenues, it is unlikely that any single or exclusive method will be adopted. The best for which we can hope is a combination of the various systems which promise the greatest benefits. We have seen that the system of separation will have to continue in part. It is probable that the system of duplication will remain in certain less important domains. The system of subordination or grants, again, will no doubt persist in certain fields where the central interests become of commanding economic importance. The probable future, so far as the bulk of the revenues are concerned, lies, however, in some form of coördination. In this system of coördination there will be room for all four methods—the realignment of government functions, the system of credits, the division of yield, and the system of supplements or additions. What is needed is a careful elaboration and testing out of each of these methods. In the final outcome success will be achieved only if due heed be given to the fundamental principles that underlie every fiscal system: the principles of adequacy, certainty, economy and flexibility, together with conformity to the demands of economic justice.

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APPROACHES TO HISTORY IV[1]

V

WE approached Historicism as an intellectual mass movement. An intellectual mass movement, however, is a product of another mass phenomenon. It implies that the intellectuals of the movement were brought up and educated to start their life with fundamentally the same or similar attitudes and therefore reacted to the problems of their time in similar ways, thus producing an intellectual mass movement.

In mass movements, however, individuality is discounted and only the common denominator accentuated. Still, what actually lives and breathes is not the general pattern, but the individual; we merge these individuals in a mass, but of course these individuals differ from one another throughout as do their fingerprints. We call a living unit an individual because if we divide it—as we of course can—we destroy its life; but we also destroy its individual life if we view it as a particle of a mass phenomenon. Incidentally, we can conceive of science and art as completely diverging in their way of dealing with the individual and the isolated moment. One establishes uniformities, the other emphasizes the individual and the unique. It is certainly easier to understand a mass movement than an isolated individual, but it will not hurt our understanding to appreciate the fact that what we have in common is that all of us are different and unique.

An intellectual mass movement, therefore, must not be conceived as if its spokesmen or participants expressed the very same ideas or otherwise resembled one another as peas of the same pod.

Even assuming an identical attitude and an identical historically given situation, all we may expect are mass reactions

[1] For earlier articles in this series, see POLITICAL SCIENCE QUARTERLY, vol. XLIV, p. 481 (Dec. 1929); vol. XLV, p. 481 (Dec. 1930); vol. XLVII, p. 410 (Sept. 1932).

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showing a similar trend. It could not be otherwise. Attitudes that our education may impose upon us do not supply us with *aptitudes*. The attitude will supply us with approach and direction, but not with the infinite variables such as temperament, versatility, penetration, susceptibility, imagination and a thousand and one aptitudes with which we are endowed in such varying degrees. We may consider these individual gifts as the material that is shaped by our subconscious attitudes, and in the twilight of the subconscious it is doubtful whether the emotional could be differentiated from the so-called intellectual. Social derivatives as these attitudes are, within which we think and feel, they also inevitably socialize our intellectual and emotional output. Obviously we think and feel as individuals, but in so far as we share the same social attitudes our thoughts and emotions cannot escape disclosing the same general characteristics and the same trend.

We are dealing here with the Romantic movement in Germany. By the Romantic movement many writers have understood quite different things. Little is to be gained by engaging in a controversy over the subject. The treatment of Romanticism in German literary history may well be cited to show what different "histories" are bound to be produced by different approaches. Under the influence of the historical method that the very men of the Romantic School introduced, the Romanticists themselves were treated historico-genetically. Their ideas were not regarded as meeting and struggling with the problems of the day, but rather viewed as continuing and developing the problems that they inherited from their literary and philosophical predecessors. Since no generation creates the world *de novo* we inevitably live in a world of continuity, but if there had been nothing except continuity there would have been no need for history. This suggests that history is a history of change within continuity. This element of change and its treatment is the element that matters, and this change can be, and is, treated in diverse ways by diverse attitudes. The historico-genetic attitude cannot abolish the element of change, but gives to that element also a quality of continuity by treating it as a development of a problem or of a situation.

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Some of the leading scholars of the nineteenth century exhibit the Romantic approach. So, for instance, Eduard Zeller tells us that the Romantic movement had a great influence on philosophy, and that this movement attached itself first and foremost to the great men of the Weimar circle: Herder, Schiller and, above all, Goethe.[1] If we go to Haym's classic work on the Romantic School we find him first of all acclaiming the historical attitude of Gervinus, whom he interprets as perhaps more strictly genetic than Gervinus actually was. Haym pays homage to Gervinus because he showed that the Romantic movement was but a continuation of the great period of the seventies; that men of the Romantic School were the saviors and guardians of German idealism with their precursors in men like Lessing, Klopstock and Wieland, who marched before where the Romanticists followed; that over all the undertakings of that school hovered the spirit of Schiller's critique, of Goethe's poetry and Herder's thought.[2] Haym further points out that a history of Romanticism cannot be written without following the development of philosophy from Fichte to Schelling. The Germans, too, had a revolution, for the history of the Romantic School is a history of a

[1] "Mit ihren ästhetischen Ansichten und ihren dichterischen Bestrebungen knüpft die Romantik zunächst an die Männer des Weimarischen Kreises, an Herder und Schiller, vor allem aber an Goethe an, von dem namentlich der Wilhelm Meister für die ganze Lebens- und Kunstauffassung die entscheidendste Bedeutung gewonnen hat." Eduard Zeller, *Geschichte der deutschen Philosophie seit Leibnitz* (München, 1873), p. 698.

[2] "Dass die Elemente der Romantik im Grunde nur eine fortgesetze Wiederaufnahme der genialen Periode der siebziger Jahre waren, dass die Genossen der neuen Schule die Pfleger und Retter des deutschen Idealismus wurden, indem sie die Ideen unsrer beiden grossen Dichter, Goethe's zumal, in Vertrieb brachten, sie steigerten, ja, im Leben zu verwirklichen suchten—das ist hier von einem Manne, der die poetischen und sittlichen Schwächen jener Idealisten zu beschönigen oder zu übersehen der Allerletzte war, ebenso richtig wie nachdrücklich hervorgehoben worden. Er zeigt — was bei mehr Kunst der Gruppirung frielich noch deutlicher hervorgetreten sein würde — wie sich hier überall nur schon vonhandene Keime voller entwickeln; zeigt, wie Winckelmann und Lessing, Klopstock und Wieland da vorangingen wo die Romantiker folgten, wie diese von der neuen Philologie getragen waren, wie über ihrem ganzen Getriebe der Geist von Schiller's Kritik, von Goethe's Dichtung, von Herder's Receptionsgabe, von Vossen's Uebersetzungskunst schwebte." R. Haym, *Die Romantische Schule* (4te Auflage, Berlin, 1920), p. 5.

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literary revolution. It was meant to be a revolution and had the effect of one.[1] Very much on the same historico-genetic lines, again attaching the movement to Schiller and Goethe, is the treatment that Koberstein gives to the Romantic movement.[2] It is useless to enumerate scores of academic volumes following the same genetic method and attaching the Romantic movement to Goethe and the "*Sturm und Drang*". Some at least admit that the pupils were not aware of their old teachers.[3]

Quite different in the main is the approach of men like Scherer. He appreciates the political situation. In fact he even dates the German nationalistic movement rather far back and considers the period from Lessing and Herder to Jacob Grimm as a nationalistic literary struggle in two chapters: first of all against foreign patterns, a struggle against the foreign domination in literature; and then against the spirit of the eighteenth century. The spirit of the eighteenth century, which is the same as the Enlightenment, is of foreign origin. He considers the Romantic movement as a revolution against cosmopolitanism in behalf of nationality, against a constructed social ideal and for the majesty of history, against the constant pursuit of what is new and for true reverence of the traditional, a revolution in behalf of organic development against rationalistic man-made changes.[4] What is commend-

[1] *Ibid.*, p. 14.

[2] "Gerade in der Zeit, wo Goethe und Schiller einander näher traten, und auf der Universität Jena die idealistische Philosophie Fichte's der Reinhold-Kantischen Lehre in der Herrschaft folgte, bereitete sich auch schon in Berlin und in Jena die Wendung vor, durch welche eine Anzahl junger Männer, zunächst in Folge der von Goethe und Schiller ausgehenden dichterischen und kunstphilosophischen Anregungen, so dann vorzüglich auch unter dem Einfluss von Fichte's Wissenschaftslehre, so wie griechischer, südromanischer, englischer und altdeutscher Poesie und Kunst, unsere Literatur in der ästhetischen Kritik, in der Kunsttheorie, in der dichterischen Production und Reproduction der neuen Gestaltung zuführte die mit dem Namen der romantischen bezeichnet zu werden pflegt." August Koberstein, *Geschichte der deutschen Nationalliteratur* (Leipzig, Vogel, 1873), vol. IV, p. 543 *et seq.*

[3] R. M. Meyer, *Die deutsche Literatur des 19ten Jahrhunderts* (Berlin, 1900), pp. 12-13.

[4] Wilhelm Scherer, "Die deutsche Literaturrevolution", *Vorträge und Aufsätze zur Geschichte des geistigen Lebens* (1874), pp. 340-341.

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able in Scherer's approach is that it introduces political motivation. His terms, however, would have been less misleading if, instead of the word "Revolution", he had used the term "counter-revolution": the counter-revolution in Germany against the revolution that took place elsewhere. Hettner approaches the Romanticists by combining geneticism with the struggle against the Enlightenment.[1] Julian Schmidt's approach is not much different. He, too, sees in Romanticism a reaction against the spirit of the eighteenth century. But his view of the eighteenth century and the reaction thereto is almost a transcript from Friedrich Schlegel, upon whose writings he looks as upon a new dispensation. To carry on the Biblical analogy we may say that he sees in Lessing a John the Baptist, a forerunner of Romanticism. What would be interesting to a historian of philosophy is his fundamental assertion that the Romantic struggle was a struggle for dualism against monism.

If from Julian Schmidt we turn to the most eminent historian of German philosophy, Kuno Fischer, we find in his characterization of the struggle the diametrical opposite. He interprets the entire period by its "*Einheitstendenz*", which permeated all aspects of life. That is why Hegel regarded Napoleon, the new Caesar, as "*die Weltseele*"; that is why Romantic philosophy rediscovered the almost forgotten Spinoza, who quenched the thirst for a monistic world-view; and Fischer looked upon this tendency, not only as a trend in philosophy, but as an influence fundamentally affecting science and art, philosophy and poetry.[2]

[1] Hermann Hettner, *Geschichte der deutschen Literatur* (Braunschweig, 1879), vol. III, pp. 436-437.

[2] "Der Zug nach Einheit und Universalität war damals der mächtigste, er hatte alle Lebensgebiete ergriffen und trieb alle bewegende Kräfte der geistigen Welt in seine Richtung, so dass sie unwillkürlich auf, ein Ziel hinstrebten und in ihm convergierten.

"Der Zug nach den all-einem hatte sich auch die Geister in Wissenschaft und Kunst, in Philosophie und Dichtung bemächtigt und traf, wo er erschien, die Empfänglichsten des Zeitalters. Die Weltanschauung aus *einem* Stück, die Erkenntnis aus *einem* Princip war seit Kant Aufgabe und Thema der deutschen Philosophie. Nichts anderes als diese Sehnsucht hatte plötzlich den fast vergessenen Spinoza wiedererweckt, und seine Lehre kam dem Einheitsdurstigen wie ein Labsal. In der Einheit ihres Principes lag die Macht und

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The approach to German Romanticism as a struggle with Rationalism and Enlightenment has of course many different shades and subvarieties and is as a rule crossed with geneticism or with an appreciation of the political situation. So, for instance, Vogt and Koch view Romanticism as a reaction against unimaginative and platitudinous Enlightenment, as an assertion of the national spirit and an appeal to history which afterwards suggested different political ideas and aims.[1] The last statement is curious for it might be more profitably reversed to have political aims suggest their particular appeal to history. Paul Kluckhohn's social-psychological approach is even more definitely antithetic to Enlightenment. In the struggle with, and the victory over, Enlightenment he sees the great achievement of German intellectual life of about 1800, of its idealistic philosophy and of the Romantic movement.[2] The more recent

Wirkung der Wissenschaftslehre. Keiner unter der deutschen Philosophen ist von dem Einheitsdrange der Philosophie so früh erfasst und wirklich beseelt worden als Schelling. Während er mit Fichte dachte sah er empor zu Spinoza als seinem Leitstern." Kuno Fischer, *Geschichte der neuern Philosophie* (Heidelberg, 1872), Bd. VI, Part I, pp. 47-48. Compare in juxtaposition: Julian Schmidt, *Geschichte der deutschen Literatur* (1886), vol. IV, pp. 44-47.

[1] "Das allgemeine, unklare Verlangen der Stürmer und Dränger nach Deutschheit gewann durch den drängenden Ernst der veränderten Weltlage in der Romantik einen bestimmten vaterländischen Gehalt, dem aus geschichtlicher Betrachtung der Vergangenheit später verschiedenartige politische Forderungen folgten. Aus dem ästhetischen Widerspruch gegen die beschränkte, phantasiearme Verstandesmässigkeit der Aufklärung entwickelte sich rasch ein Gegensatz auf den verschiedensten Gebieten." Vogt and Koch, *Geschichte der deutschen Literatur* (1910), vol. II, p. 346.

[2] "In der Auseinandersetzung mit dieser Bewegung liegt ein Hauptproblem des 19. und des beginnenden 20. Jahrhunderts, wie die Romantik selbst sich mit den geistigen Strömungen des ausgehenden 18. Jahrhunderts auseinanderzusetzen hatte—im besonderen einerseits mit den Idealen der klassischen Dichter, andererseits mit der sogenannten Aufklärung. Und gerade aus dem Gegensatz zu diesen Bewegungen lässt das Werden und Wesen der Romantik sich am leichtesten begreifen.

"Die Aufklärung ist die entscheidende europäische Geistesbewegung der letzten Jahrhunderte. Sie ist keine deutsche Bewegung allein, hat vielmehr in anderen Ländern Europas ihre Hauptwurzeln und ist denn auch in Frankreich und in England viel unumschränkter als in Deutschland zur Herrschaft gekommen. Gerade in der Überwindung der Aufklärung liegt ein wesentliches Verdienst des deutschen Geisteslebens um 1800, der idealistischen Philosophie und der Romantik. Freilich gilt diese Überwindung nur für die geistig führenden Kreise des deutschen Volkes, und die Gegenbewegung im 19. Jahrhundert war stark." Paul Kluckhohn, *Die deutsche Romantik* (1924), p. 3.

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years suggested to German writers a social-political approach which emphasized the national awakening in days of national defeat and humiliation. Such an approach is to be found, for instance, in Lindemann's textbook,[1] although in earlier books there are illustrations of the political situation precipitating and crystalizing the already existent Romantic tendencies which were inherited from Herder, Goethe and others.[2] A political approach in more drastic terms of modern German nationalism is to be found in Schellenberg's interesting book. It is an approach to Romanticism as a national revolt of the German spirit against cheap rationalism, against indifference to one's country in the name of cosmopolitanism, to one's religion in the name of tolerance — an indifference which Lessing, the friend of Mendelssohn, exhibited in his *Nathan der Weise;* it sees in Romanticism a revolt against French skepticism represented by Voltaire, the court jester of Frederick the Great. This approach makes the book instructive because of its passion, instructive because it serves as an example of nationalistic resentment, and thus helps us to understand how the men of the Romantic period might have felt.[3]

[1] "Gleichzeitig mit diesem Weltkrieg fällt das Wirken der neueren romantischen Schule; die Begeisterung der Freiheitskämpfe ist grossenteils ihr Werk." Lindemann, *Geschichte der deutschen Literatur* (10th ed., 1923), vol. II, p. 282 *et seq.*

[2] "Und alle diese zerstreuten Kraftlinien mussten zusammengeführt werden in einem Mittelpunkt, als die Zeitverhältnisse, vor allem der Druck der Fremdherrschaft, das deutsche Bewusstsein in den Geistern entzündeten und mit ihm dem Nationalen neue Geltung verschafften. Unter dem Einflusse dieser Stimmung der Gemüter wuchs auf und erstarkte auch innerhalb des Kreises der Romantiker die Wissenschaft von deutscher Art, Sprache, altem deutschen Recht, die 'Germanistik' im weitesten Sinne, und gewann durch Erschliessung neuer Quellen und durch den Umgang ihrer Hauptbegründer, der Brüder Grimm, mit Dichtern der Zeit Einfluss auf Stoffwahl und Auffassung." Otto von Luxner, *Geschichte der deutschen Literatur* (1899), p. 762.

[3] "Man vermeinte, durch Erklärungen, durch wissenschaftliche Umschreibungen die Dinge zu fassen und in ihrem Wesen zu durchdringen; man lächelte hochmütig über alle unmittelbaren Regungen der Seele und glaubte, auch das Ewige auf deutbare Formen und Fassungen zurückleiten zu dürfen. Dieser winterliche Rationalismus, der zum Teil aus französischen Quellen gespeist wurde (wie ja der Deutsche immer bemüht war, sich durch fremde Beispiele zu korrigieren und umzubiegen), musste deutscher Art und Empfindung fern und abhold bleiben; und die Auflehnung geschah in der Roman-

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It goes without saying, however, that the nationalists were not the only ones to discuss Romanticism with fervor and passion. Georg Brandes is a good example of a radical democrat. As a historian of literature he is the defender of the eighteenth-century heritage. A passage or two will do as an illustration:

> One feels as if Romanticism ended in a sort of witches' Sabbath in which the philosophers played the part of the old crones, amidst the thunders of obscurantists, the insane yells of the mystics, and the shouts of politicians for temporal or ecclesiastic despotism, while theology and theosophy fell upon sciences and suffocated them with their caresses. . . .
>
> To my mind no worse accusation can be adduced against gifted men, no surer sign of their weakness adduced than this, that far from raising the women who have given themselves to them and followed them, they have dragged them down, taken from them their highest interests and noblest sympathies, and given them small and mean ones in exchange. From such a charge the Romanticists cannot free themselves. They treated the great women given them by the gods as they treated the great ideas which were their heritage; they took from them the noble, liberal minded, social and political enthusiasm by which they were naturally characterized, and made them, first Romantic and literary, then remorseful, and finally Catholic.[1]

tik, welche als bewusster Gegensatz zu dieser altersschwachen Müdigkeit hereinlenzte. Rationalismus ist immer zu behaglicher Duldung geneigt, zu vorsichtiger Zweifelsucht. Damit glaubt er seine Vornehmheit erwiesen zu haben. Er wägt die Dinge, ohne eine sichere Entscheidung zu finden. In Lessings 'Nathan' ist dieser Geistesrichtung ein allbekanntes Denkmal errichtet: Christ, Muselmann und Jude reichen sich einträchtig die Hände, weil sie alle nicht den Beweis innerster Erfahrung erlebt, sondern sich durch gutmütige Diskussionen an einander angeglichen haben. War ja Lessing nicht umsonst der Freund Moses Mendelssohns und Nikolais, mit deren Namen all der dumpfe Aufklärichter auf immer verbunden ist. Nicht unerwartet entspross diese so blutleere Denkweise dem Staate Friedrichs des Grossen, in welchem jeder nach seiner Façon selig werden sollte und wo Gesetze zusammenhalten mussten, was eben erst mühsam aneinander geschweisst worden war. Der König selbst hatte einen französischen Skeptiker als Hofnarren bei sich und lebte in der kühlen Luft beständig lächelnder Vernunftabschätzung." Ernst L. Schellenberg, *Das Buch der deutschen Romantik* (1924), p. 2.

[1] G. Brandes, *Main Currents in Nineteenth Century Literature* (English translation, New York, 1902), vol. II, p. 16 and p. 98.

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Let us now turn to a quite different variety of approach. That pretty phrases will not take us very far in dealing with the history of literature, of art and of philosophy has long been realized. It has also long been felt that the verdict of history upon men of letters and philosophers is in reality a test, not of them, but of the historian and the way he deals with them. Natural sciences achieved great results. Why should not the history of literature learn something from the methods employed by science? This was the doctrine preached, but hardly followed, by Wilhelm Scherer. He demanded specialized investigations which would reduce literary phenomena to the underlying factors that produced them. That one's view of the character of the phenomena, as well as one's view of the underlying factors, is a matter of attitude and approach did not, however, occur to Scherer. He lived to make fun of the "exact" investigations which his own counsel of perfection had produced.[1] Neither Scherer nor his immediate followers, like Erich Schmidt, ever actually employed methods in the remotest way resembling those of the natural sciences, and Scherer did not live to see what literary history could be if treated ethnographically and anthropologically.

The new "scientific" approach, however, has nothing to do with Scherer. Nearly all literary historians had always dealt with the peculiarities of the national spirit. What these peculiarities were, however, was difficult for them to define. In Germany, where philosophy and research in the arts and humanities reached the proportions of large-scale industries, the *Volksgeist* celebrated its peaceful penetration into all branches of the learned industry short of the scientific laboratories. Yet it would be misleading to assume that it was a German invention. Germany had no monopoly on the *Volks-*

[1] "Mit schönen Ansichten, mit geistreichen Worten, mit allgemeinen Redensarten ist uns nicht geholfen. Wir verlangen Einzeluntersuchungen, in denen die sicher erkannte Erscheinung auf die wirkende Kräfte zurückgeführt wird, die sie ins Dasein riefen. Diesen Massstab haben wir von den Naturwissenschaften gelernt. . . . Die Naturwissenschaft zieht als Triumphator auf den Siegeswagen einher, an den wir alle gefesselt sind." Quoted by Franz Schultz in the collection of essays edited by Emil Ermatinger, *Philosophie der Literaturwissenschaft* (Berlin, 1930), p. 40.

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geist. Look at the writings of Renan or read, for instance, what Taine tells us:

> A nation lives twenty, thirty centuries and longer, and a man lives but sixty or seventy years. Nevertheless, a nation has a good many points in which it is like a man. For, in a career so long and almost interminable, a nation has its own character, both mental and moral, which manifests itself at the beginning, and develops from epoch to epoch, preserving the same fundamental qualities from its origin to its decline. This is a matter of experience, and whoever has followed the history of a people, for instance, of the Greeks from Homer to the Byzantine Caesars, the Germans from the *Nibelungen Lied* to Goethe, the French from the first *Chansons de geste* and the earliest *fabliaux* down to Béranger and Alfred de Musset, cannot help recognizing in the life of a nation a continuity as strict as in the life of an individual.[1]

We find this national spirit in nearly all the French historians. Take as an example Michelet's *Histoire de France.* It is the national spirit of the French that accounts for the unification of the French provinces; the amalgamation was accomplished by the social instinct, "*la vive et rapide sympathie du génie gallique*".[2]

It will serve no good purpose to trace in this connection how old the idea of the national spirit is or how it was used. We shall have to revert to the subject in considering the historical school of jurisprudence. Here, however, we would like to

[1] Taine, *History of English Literature,* the author's special Introduction to the English translation by H. Van Laun (New York, Henry Holt, 1879), vol. I, p. ix.

[2] "Cette unification de la France, cet anéantissement de l'esprit provincial est considéré fréquemment comme le simple résultat de la conquête des provinces. La conquête peut attacher ensemble, enchaîner des parties hostiles, mais jamais les unir. La conquête et la guerre n'ont fait qu'ouvrir les provinces aux provinces, elles ont donné aux populations isolées l'occasion de se connaître; la vive et rapide sympathie du génie gallique, son instinct social ont fait le reste. Chose bizarre! ces provinces, diverses de climats, de moeurs et de langage, se sont comprises, se sont aimées; toutes se sont senties solidaires. Le Gascon s'est inquiété de la Flandre, le Bourguignon a joui ou souffert de ce qui se faisait aux Pyrénées; le Breton, assis au rivage de l'Océan, a senti les coups qui se donnaient sur le Rhin." J. Michelet, *Histoire de France* (Paris, 1861), vol. II, p. 105.

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point out how nicely the spirit of a people, the *Volksgeist,* could be used both for uniting a motley population of different origins into one nation, and for dividing a nation into divergent parts by considering their different tribal origins. After all what is a modern nation? It is an amalgamation of a population that belonged to different tribes, possibly different racial stocks. These different tribes and stocks must have their peculiar "spirit", their hereditary characteristics that persisted and were transmitted to their distant descendants. These different stocks obviously had to live somewhere and sought different places. The climates of these places must have differed and, if the climates did not, then the landscapes assuredly did. Would not different landscapes, different geographical situations, affect different stocks so as to produce in them definitely dissimilar mental characteristics? Yet the history of thought and of art and of literary expression, because of the lack of scientific method, completely overlooked the ethnological composition of its national literature! Such was the "new" thought and the "scientific" utilization of the old *Volksgeist* in literature.

There is no doubt that other elements enter into the picture, especially the development of ethnology. The title of August Sauer's "*Rektoratsrede*", which postulates the new approach to the history of literature, is *Literaturgeschichte und Volkskunde* (1907). It is there that we find the development of the position that the tribal characteristics of the original stock form the oldest and most solid structure upon which are built all other influences and impressions, such as those of rearing, education and mode of life. Were these tribal characteristics recognized by us and scientifically understood, they would furnish criteria for a natural grouping of the writers and poets of a people.[1] It is easier to understand the characteristics of a

[1] "Diese Stammesmerkmale bilden die älteste und festeste Schicht, auf welcher alle anderen Einflüsse und Eindrücke, wie sie Erziehung, Bildung und Leben mit sich bringen, sich aufhauen und wären uns diese Stammesmerkmale bekannt, wären sie wissenschaftlich erfassbar, so gäben sie ein ausgezeichnetes Kriterium zu einer gewissermassen natürlichen Gruppierung auch der Literaten und Dichter eines Volkes." A. Sauer, *Literaturgeschichte und Volkskunde* (1907), p. 21.

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countryside, of a province belonging to a special German tribe, than the character of a nation.[1] In breaking up a nation into its ethnological components and scattering the so-called *Volksgeist* among the spirits and characters of individual localities, Sauer really was not a heretic as far as the historico-genetic school was concerned. Was this not one of the reasons that Savigny gave for his opposition to a national code of law: namely, the importance of the preservation of the *Landsrecht,* the local provincial law, etc.? What legitimatized the local law was obviously not the spirit of the nation, but the *Geist* of the particular locality in question. Where Sauer goes further than the historical school is in his insistence upon the need of research into the genealogy of the individual writers. Such research Sauer believes will disclose the tribal characteristics of the individual poets and men of letters.[2]

The lectures of Professor Sauer in the German University of Prague inspired Joseph Nadler to carry on and develop Sauer's ideas. Thus in 1918 he published a history of the literature of German tribes and countrysides. He divided the German tribes into two categories of old and new stock. The first were essentially Western groups, the second originally

[1] "Während aber der Charakter einer so weitverzweigten Nation wie der deutschen wissenschaftlich in der Tat sehr schwer fassbar ist, scheint der Charakter der einzelnen deutschen Stämme, Landschaften, Provinzen und Länder, welche bei grosser Verschiedenheit im einzelnen durch einheitliche Züge miteinander verbunden sind, viel leichter zu bestimmen zu sein." *Ibid.,* p. 20.

[2] "Die Familiengeschichte, auch die der bürgerlichen Familien, ein noch wenig betriebener Zweig der durch Lorenz wieder zu Ehren gebrachten Genealogie, ist in erhöhtem Masse für die literarhistorisch-biographische Forschung zu verwerten und die Aufstellung verlässlicher Stammbäume für alle bedeutenderen Dichter anzustreben." *Ibid.,* p. 35. "Es ist der Versuch zu machen, einen Abriss der deutschen Literaturgeschichte in der Weise zu liefern, dass dabei von den volkstümlichen Grundlagen nach stammheitlicher und landschaftlicher Gliederung ausgegangen werde, dass die Landschaften und Stämme in ihrer Eigenart und Wechselwirkung darin mehr als bisher zur Geltung kommen und dass bei jedem Dichter, jeder Dichtergruppe und jedem Dichtwerke festgestellt werde, wie tief sie im deutschen Volkstume wurzeln oder wie weit sie sich etwa davon entfernen. Der Literaturgeschichte von oben träte eine literaturgeschichtliche Betrachtung von unten, von den volkstümlichem Elementen aus mit besonderer Berücksichtigung der Dialektpoesie zur Seite." *Ibid.,* p. 36.

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Slavic tribes which had become Germanized. The Teutonization and unification of these Slavic groups produced the new stock, the *Neustämme*. And here we come to the new approach to the history and origin of the Romantic movement in Germany. The new stock, or *Neustämme,* brought it about! Romanticism is the expression of their peculiar temperament. But how could such a statement hold water since men from the East, West, North and South held the same views and worked side by side expressing the same ideas in the achievement of similar ends? It is done very simply. What Nadler called Romanticism in the East-Prussian groups he termed Restoration in the men of letters and thinkers of Western German origin. Romanticism, Nadler informs us, is the crowning glory of German colonization in the Eastern provinces. The mixed blood, the soil and the soul became Teutonized. Romanticism means the desire to be German; it is a free act of will. Romanticism did with right what the sword and the plough accomplished by might. Only through Romanticism did this new stock, this mixture of Slav and German, become really German.[1]

The Western Germans of the old German stock were through

[1] "Romantik ist die Krönung des ostdeutschen Siedelwerkes, als das gemischte Blut langsam zur Ruhe gekommen war, die Verdeutschung der Seele nach der Verdeutschung der Erde und des Blutes. Romantik heisst deutsch sein wollen durch eine freie Tat das Willens, einen zwingenden Folgeschluss des Verstandes, eine Weihestimmung des Gemütes nach dem Zwange des Bodens und des Blutes. Die Romantik machte zum Recht, was nur Gewalt des Schwertes und des Pfluges gewesen war. Sie machte Gesetz zu Recht. Romantik ist das Rechtsbedürfnis auf die Kultur der Neustämme wie Renaissance das Rechtsbedürfnis der Altstämme auf die Kultur der klassischen Welt war. Und wenn man die Augen in die weiteste, erkennbare Ferne kreisen lässt: Romantik war das Umschalten der einstmals slavischen Völker zwischen Elbe und Memel von Ostrom auf Westrom, vom griechischen zum lateinischen Wesen, vom Morgenland zum Abendland. Daher beginnt die Geschichte der Romantik nicht mit Friedrich Schlegel, Tieck und Friedrich von Hardenberg, sondern mit der Stunde, da die Neustämme geboren wurden. Sie war das Erwachen des deutschen Blutes in den eingedeutschten Völkern, wie sich das Blut der Väter oder Mütter in den Kindern reicher Ahnen regt. Deutsch wurde der Osten erst in der Romantik. Sie ist das Zeugnis, dass die Neustämme eine Rasse geworden waren, aus hundert Mischungen ein Lebendiges, Einheitliches, Neues." Joseph Nadler, *Literaturgeschichte der deutschen Stämme und Landschaften* (Regensburg, 1918), Bd. III, p. 9.

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with their Renaissance movement, with their Classicism, when the Holy Roman Empire collapsed. They felt the need for a German *Restauration* and it is such a *Restauration,* such new acquaintance with the treasurehouse of their people's thought, that is signified by books like *Des Knaben Wunderhorn* and by the new appreciation of their German past.[1] The two movements, the Eastern Romanticism and the Western *Restauration,* were united in common work. Romanticism was the final expression of the German triumph in Eastern colonization, and the Restoration was the rejuvenation of the Western German world. Such a rejuvenation was forced upon them by the collapse of the Empire and by the danger to the German spirit of a complete dissolution in Classicism, a danger that had threatened the German soul in the Western lands ever since the days of Charlemagne.[2]

In 1921 Nadler followed his history of literature with

[1] "Was bedeuten die Heidelberger Jahre für die Entwicklung der westdeutschen Restauration? Die Durchforschung, das wissenschaftliche Erfassen der literarischen Formen deutscher Vergangenheit machte Fortschritte; die Restauration begann sich langsam deutscher Universitäten zu bemächtigen; die Begründung einer neuen Wissenschaft vom deutschen Schriftum, einer historischen, war eingeleitet; 'Des Knaben Wunderhorn', 'Die teutschen Volksbücher' und die heranreifenden 'Kinder- und Hausmärchen' gaben einen anschaulichen überblick über die Entwicklung des deutschen Schriftums nach seinen rein völkischen Elementen und mussten vorläufig den Mangel an Ausgaben ersetzen; damit war ein gewaltiger kultureller, sittlicher, völkischer Schatz, ein Schatz an literarischen Stoffen und Formen, dem kommenden Jahrhundert erschlossen; die Einheit des Willens unter den westdeutschen Stämmen war erwiesen und wenigstens der Versuch gemacht worden, sie in einer Zeitschrift zu gemeinsamer Wirkung zusammenzufassen. Der Klassizismus, der die deutschen Renaissancebewegungen eines Jahrtausends abgeschlossen und mit dem Zusammenbruch des alten Reiches seinen geschichtlichen Sinn verloren hatte, war damit von der Restauration überwunden." *Ibid.*, p. 307.

[2] "Romantik und Restauration, entwicklungsgeschichtlich grundverschiedene Bildungskräfte. Die Romantik der kulturelle, literarische, künstlerische Abschluss des ostdeutschen Siedelwerkes, die Wiedergeburt der neudeutschen Stämme aus der Vergangenheit, aus dem Geiste des Mutterlandes, wie die deutschen Renaissancebewegungen das Kulturwerk Westrom an den Germanenstämmen abschlossen; die westdeutsche Restauration, die geistige Erneuerung des deutschen Mutterlandes, erzwungen durch den Zusammenbruch des alten Reiches, durch den gemeinfränkischen Umsturz, durch das bedrohliche Versinken deutschvölkischer Wesenheit im Klassizismus seit den Tagen Karls des Grosse." *Ibid.*, p. 308.

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another work exclusively devoted to the Berlin Romanticists. His approach is the same but it is applied to a particular group. His main proposition is that the German people emerged from two halves which are today divided by the Elbe and the Saale. The Southern half developed from the Germano-Roman life, the Northern from the Germano-Slavic. This division controlled German literature until—and even into—the nineteenth century. Since it is simpler to characterize situations by traditional names than to agree upon a new nomenclature, we may call the diametrically opposed tendencies Classicism and Romanticism. These movements completely controlled German culture, education and literature.[1] Written with a chip on the shoulder (the preface carries the superscription, "*Vorschuss an meine Scherbenrichter*"), this book is spirited but not much more. If by chance an important figure does not fit into his classification in respect to surroundings or birth, then the ancestors of such a personality are considered and he is fitted into the classification genealogically, as for instance Friedrich Schlegel.[2] He was active in Jena and Berlin and was born in Hanover, but, no matter, his "tribe" (*Sippe*) came originally from Dresden!

To us only the variety of approaches and the historical patterns they present are of interest. We cannot, however, help noting the "countryside" in which this particular approach originated. It was in the German University of Prague which was in Austria and is now in Czechoslovakia. There the national, the language and racial questions were of

[1] "Der Historiker hat sich an die Vorgänge zu halten. Das deutsche Volk erwuchs aus den zwei Hälften, die heute Elbe und Saale trennen. Die südliche Hälfte ist aus der römischgermanischen Lebenseinheit erwachsen, die nördliche aus der deutsch-slawischen. Diese Doppelheit beherrscht bis ins neunzehne Jahrhundert die Literatur. Weil es einfacher ist, überkommene Namen für eine Sache umzudeuten, als sich über neue zu einigen, so mögen Klassizismus und Romantik die beiden grundverschiedenen Vorgänge weiter benennen, die für die deutsche Bildung und Literatur entscheidend waren. Die geschichtlichen Vorgänge als solche habe ich klar genug umschrieben, um zu wissen, was ich so benenne." Nadler, *Die Berliner Romantik 1800-1814* (Berlin, 1921), p. 45.

[2] "Nicht von Hannover aus, wo er ja nur geboren wurde, von Dresden aus, dem heimatlichen Boden seiner Sippe, hat Friedrich Schlegel dem romantischen Gedanken die letzte Wendung gegeben." *Ibid.*, p. 77.

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utmost importance. That an attempt should be made there to decide politico-intellectual movements on purely racial lines is not surprising, but it is psychologically interesting to note the unfortunate defects and limitations of psychology. Sauer and Nadler, feeling as they did, assumed that even the intellectuals in Königsberg felt the same. But Germans in Königsberg were not a minority, and Königsberg in the days of Hamann and his pupil Herder was completely German—provincial country-cousin German, but not so provincial as to prevent Herder from being profoundly influenced by Montesquieu.[1]

If simple historical geneticism is a very simple mental proposition, a combination of geneticism with line and cross-breeding increases its probable error without lifting it to a higher mental plane or giving it any more acceptable scientific foundation. We have heard of a mountain giving birth to a mouse, but not of the same mouse being twice born; this, however, seems to have been the fate of poor Herder. After the geneticists discovered in Herder the man responsible for the Romantic movement, Nadler gave birth to the same discovery: "It was Herder who helped to transform the German soul. His creative tool was the Romantic movement. The most part of what is called Romanticism came from Herder."[2] Whether, therefore, we remain with geneticism or migrate with Nadler toward the East, we find salvation for the German soul in Herder, and we move in the same circle. For in a circle we do not go anywhere, we always come back; nor do we, as Ernst Lissauer tells us, put our foot even on that limited ground around which we circulate:

[1] The writings of Herder testify to the profound influence of Montesquieu. See reference to Herder's works in Ergang's *Herder and the Foundations of German Nationalism* (1931), p. 251.

[2] See Nadler's article: "Goethe oder Herder?", *Hochland*, vol. 22, pp. 1-15. See also a very appreciative article by Karl Emmanuel Lusser: "Joseph Nadlers Neubegründung der Literaturgeschichte", *Hochland*, vol. 21, pp. 160-183. In this article even Nadler's inconsistencies are considered most fortunate and quite necessary. So we read: "In Kapitel III lässt er weitherzig Juden und Franzosen ohne die ostdeutsche Blutsunterlage, blosse Ideenromantiker, am romantischen Symposion teilnehmen. Das ist eine Inconsequenz, aber eine begreifliche, glückliche, sozusagen notwendige" (p. 183).

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Es sprach der Kreis: mein Leben ist nicht Glück.
Ich wandre nicht, ich kehre nur zurück.
Ein stückchen Welt erglänzt mir Lieb und Licht.
Mein Weg umkränzt es. Er betritt es nicht.

The new elaborations and variations on the old theme of the *Volksgeist* have been successful in attracting the attention of modern historians of German literature and in influencing them to a greater or less degree. Scientifically they no more advanced the study of the spirit of the tribe and countryside than they advanced the study of the spirit of a nation. They failed to find themselves in the subject which they handled and discussed so loquaciously. But they were not particularly to blame. The political historians and jurists, the philosophers and ethnologists who preceded them, did not do any better. One could almost say that, as a rule, the more "scientific" the appearance of the discussion, the worse it was.

Take for instance the book of Baur-Fischer-Lenz, *Menschliche Erblichkeitslehre*. Its scientific apparatus is impressive: there are drawings of flowers and photographs of pigs (fig. 3), for we must learn a great deal before being introduced to the final chapter, "*Die seelische Unterschiede der grossen Rassen*" by Lenz. The book is neither better nor worse than the scientific books on this subject are apt to be, even if every page is replete with scientific information of a curious nature. So, on page 414 we learn that the Chinese, because they are Mongols, never had great thinkers or inventors, nor do they show any metaphysical tendencies!

Of somewhat questionable "scientific" value is what we are told about the "superficiality and rationalism of the French spirit", the "*esprit gaulois*", as well as that of all Celtic races—a superficiality to be traced to a Near-Eastern (*vorderasiatisch*) racial origin.[1] It goes without saying that "science" is not unappreciative of the Teuton race, but what is said about other races is less flattering. Goethe of course looms as the ideal German type, and our impression is that "science" does not even suspect to what extent Goethe was affected by Voltaire

[1] Baur-Fischer-Lenz, *Menschliche Erblichkeitslehre* (2te Auflage, 1923), pp. 416-417.

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and Schiller by Rousseau.[1] What if their minds had been contaminated by French superficiality? And indeed there is a touch of the "*esprit gaulois*" in one of Schiller's and Goethe's *Xenien:*

> Steil wohl ist er, der Weg zur Wahrheit, und schlüpfrig zu steigen;
> Aber wir legen ihn doch nicht gern auf Eseln zurück.

The difficulty with all such writings—as well as with the entire literature on the *Volksgeist,* the comparative psychology and hereditary characteristics of peoples and races, whether the treatment be literary or scientific—is the failure to distinguish between attitudes on the one hand and natural gifts, capacities or aptitudes on the other. What is called a trait may be an attitude, a capacity or an attitude directing a capacity. It is indeed very probable that many capacities or aptitudes are hereditary, whether of physiological nature or of the realm of psychological reactions. They would then affect the degree of a particular kind of reaction. Attitudes, on the other hand, which organize, direct and use our capacities are entirely a matter of rearing and education. Straightforwardness or duplicity, rationalism or mysticism, kindliness or cruelty —these are attitudes, conscious or unconscious. These are the attitudes that direct our outlook, the way we approach life. Assuredly, those who are responsible for our education form our unconscious attitudes and establish our life habits. Since our upbringing is in the main traditional and by and large the same for given classes of people, it undoubtedly forms similar patterns of psychological reactions. If, however, the powers and conditions that establish our attitudes change, the control and organization of the capacities and powers which we have inherited also change, and with them our outlook on life and such traits of ours as are affected by the changed attitude.

[1] "Characterische Züge vorderasiatischen Typus scheint mir auch Rousseau zu bieten mit seiner glühenden erotischen Phantasie, seiner fabelhaften Kunst der Einfühlung und der demagogischen Wirkung. Das Nordisch-Männliche war ihm unbehaglich, und seine Werke haben überhaupt etwas Unmännliches wie auch sonst die Werke vorderasiatischer Schriftsteller." *Ibid.*, p. 417.

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We saw that the attempt to approach German literature on a racial line, to divide the German stocks into Classic and Romantic, was not a success. When West and East seemed to have reacted in the same way, when Western "Classicism" became indistinguishable from Romanticism, Nadler found another name for it and called it *Restauration*. Different were the speculations on the subject of the *Zeitgeist*. Although these speculations have at times followed curious paths and occasionally become stranded in many a blind alley, we cannot help feeling that in recent decades decided progress has been made.

VI

History as a record of the past satisfied neither the ignorant nor those who sought to go beyond the confines of what our mind may know. History with its limitations became a divination rod used by prophets like Daniel and poets like Virgil and by those who combined the two arts—the philosophers of history.

An interesting attempt of our own day is that of Karl Joel. He tries to decipher the spirit and the rhythm of centuries, watching and interpreting the swing of the pendulum. The idea that each century has a spirit of its own is not a new one. Lorenz considered a century as a unity of three generations which knew each other because they were in personal contact.[1] Some like Scherer, on what they considered an empiric basis, assumed that centuries in their rhythm form higher units, definite cycles of three hundred years' duration. This sounds a little like cabalistic mysticism, yet it emanated from a man of positivist tendencies.[2] This division of history

[1] O. Lorenz, *Die Geschichtswissenschaft in Hauptrichtungen und Aufgaben* (Berlin, 1886); and Herbert Cysarz, "Das Periodenprinzip in der Literaturwissenschaft" in Emil Ermatinger's *Philosophie der Literaturwissenschaft*, p. 101.

[2] "Vom Anfang der mittelhochdeutschen Epoche müssen wir nun abermals dreihundert Jahre zurückrechnen, um eine in sich geschlossene Entwickelung zu erhalten. Gegensätze zwischen der karolingischen und ottonischen Periode sind vorhanden, wer wollte sie leugnen. Aber im Grossen angesehen schliessen sie sich näher zusammen und vieles ist ihnen gemeinsam. Otto der Dritte und Karl der Grosse sind klärlich Menschen des selben Typus, der selben Epoche. "Diese gesammten dreihundert Jahre aber von der Mitte des achten bis zur

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into periods and cycles was elevated in some recent writings into a science of "periodology".[1] Joel follows the three-generation concept. What he tries to do is to show how each century of thought was opposed and countered by the following century and how this rhythmic change, this clash and friction, expresses the character of the times, the character of the life and thought of the succeeding centuries of human history.[2] It is interesting to see how he handles the centuries.

Mitte des elften Jahrhunderts muss man mit der Reformepoche von 1350-1650 vergleichen. . . . In diesem Sinne werden sich hoffentlich jene dreihundertjährige Perioden rechtfertigen, auf die ich gewiss noch öfters zurückkommen darf." Wilhelm Scherer, *Geschichte der deutschen Dichtung im elften und zwölften Jahrhundert* (Strassburg, 1875), pp. 8 and 10.

We are indebted to Scherer for another and still more original approach (or is it a "discovery"?), namely, that history presents a rhythm of masculine and feminine epochs. See *op. cit.*, p. 1. And mind you, it could be statistically and biologically proven.

"Ich habe von den Feinden nur Spott, von den Freunden keine entschiedene Beistimmung geerntet. Dennoch bleibe ich fest davon überzeugt, und jedes erneute Studium bestärkt mich darin. Ich glaube, dass die Abwechslung männlicher und weiblicher Epochen der weitesten Verallgemeinerung fähig, dass sie deductiv aus dem Wesen der Vererbung und des Geschlechtsverhältnisses zu begründen und für die Beurtheilung aller menschlichen Entwicklung als ein Leitfaden zu benutzen ist." W. Scherer, *Kleine Schriften zur altdeutschen Philologie*, herausgegeben von Konrad Burdach (Berlin, 1893), p. 675. *Fabula docet*: do not emancipate your women folks. That was his positivist conclusion.

Scherer, however, may rejoice in heaven, for he did after all find a follower. Thus the Spanish metaphysician, Don José Ortega y Gasset, informs us in a recent book:

"There is in fact a pendulum movement latent in history which swings from ages subjected to the dominant influence of respectability to ages that surrender to the yoke of the female principle." *The Modern Theme* (London, 1931), p. 18.

[1] "Die Periodologie, als System von Abfolgeregeln und Grenzsetzungen behandelt, stellt Fragen nur untersten Rangs; die Periodologie hingegen als Gesträng, nicht als Gerät, als Wesenform nicht Ordnungsnorm, offenbart die Totalstruktur einer Wissenschaft, und durch diese hindurch einen Sektor, ja vielleicht eine Hemisphäre des gesamten globus intellectualis." Herbert Cysarz, *op. cit.*, p. 92. The reader need not develop an inferiority complex because he fails to understand Cysarz's thought. He means that, leaving aside mere classification, a period that is a real period is really a period in history as you conceive history really to be.

[2] "Alle Zeiten, Völker, Menschen aber schwingen mehr oder minder nach einer Seite, und in grösseren Zeitzusammenhängen, zumal im bewussten Lebens-

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The eighteenth century, for instance, is that of Enlightenment, the seventeenth century is one of religious fanaticism and of repression, dominated by the spirit of compulsion and uniformity. Fanaticism characterized church, state and people.[1] Science was suppressed. Bruno was burned in the last year of the sixteenth century; Galileo was forced to recant, etc.[2] But Joel is not satisfied with giving such a picture of Western Europe alone; the power of the spirit is by no means limited to a definite space. In Japan the Jesuits are massacred; in Russia the Old Believers burn themselves in the fury of religious zeal; in Morocco there are processions of wild flagellants and there flourishes a sect of *Aysauas* whose members eat cacti and tear young lambs to pieces.[3] It would seem, however, that we can make each century sing quite different songs. Friedrich, for instance, also dealing with centuries, devotes himself to a study of the characterization of the last three hundred years. In this study he sums up the spirit of the seventeenth century as the century which prepared the age of Enlightenment by ending religious wars, by furthering scientific discoveries and the spread of rationalistic and skeptical thought.[4] So the doctors do not appear to agree.

zusammenhang dreier noch sich kennender, unmittelbar aufeinander einwirkender Generationen, also etwa in hundert Jahren lebt sich eine Grundrichtung aus, bis aus ihrer abtötenden Ueberspannung der Lebensgeist das neue Jahrhundert zu einer Gegenrichtung führt. Deutlicher als einst Ranke soll man heute von den *'Ideen', den 'Tendenzen der Jahrhunderte'* sprechen, und dabei lassen sich auch die modernen Probleme der historischen Periodisierung, die Streitfragen über die Dauer des Mittelalters, über den Charakter der Renaissance u. dgl. durch schärfere Differenzierung der Zeiten fördern. Es gilt überhaupt erst heute die *Macht der Zeit* und ihre *Grenze* voll zu erfassen in den Charakteren der Zeitgeister. So führt nun dieses Werk in steter Parallelisierung von Denk- und Weltgeschichte die Säkulargeister in ihrer Folge vor, die sich dabei als ein *rhythmischer Wechsel* gegensätzlicher und eben dadurch sich aneinander klärender und steigernder Grundrichtungen offenbart, und erst aus dieser Reibung der Gegensätze entspringt die Geschichte als eine Katharsis des Lebens und Denkens." Karl Joel, *Wandlungen der Weltanschauung* (Tübingen, 1928), vol. I, p. viii.

[1] *Ibid.*, p. 346.

[2] *Ibid.*, p. 344.

[3] *Ibid.*, p. 346.

[4] "17. Jahrhundert Vorbereitung der Aufklärung durch den Abschluss der konfessionellen Kämpfe, die naturwissenschaftlichen Entdeckungen, die Ent-

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It can be seen, entirely apart from the question of Joel's main objective, that he has amassed data which were of doubtful value for purposes of coördination. If he quotes from records of processions of flagellants in Morocco in the seventeenth century, the query is: could he not find the same flagellant processions in Morocco in the eighteenth century, the age of Enlightenment, or in the sixteenth century in the lifetime of the skeptics of the Renaissance? We have heard about flagellants among Indians in New Mexico in the twentieth century, but this shows only that the life of that particular group is not to be coördinated with American life of the twentieth century. Joel mentions massacres of missionaries in Japan in the seventeenth century, but we would have had a massacre of missionaries in China in the twentieth century if it had not been for the British warships. The difficulty with Joel's enterprise is that it is too far-flung an attempt at a schematic coördination. Had these studies been less ambitious and had they dealt with more critically sifted material they certainly would have been of greater service.[1]

The concept of the century as a three-generation group is a yardstick as arbitrary as it is difficult to use. If we talk of the rhythm of centuries and observe the numerals of our calendar, are we not unconsciously making use of data, measures and balances that have been foreordained as, let us say, is suggested in Proverbs 16:11 or taught by the Book of Wisdom 11:21: "*omnia in mensura et numero et pondere disposuisti*"? The social philosophers obviously could simplify their problem by dealing with generations rather than with centuries. That is exactly what has been done at least in the

stehung der rationalistischskeptischen Denkweise vornehmlich in England." F. Friedrich, "Versuch über die Perioden der Ideengeschichte der Neuzeit und ihr Verhältnis zur Gegenwart", *Historische Zeitschrift*, vol. 122 (1920), p. 43.

[1] It is interesting in this connection to note how old the endeavor is to coördinate historical phenomena. So Lempicki has brought to light the forgotten book of Chrystophorus Mylaeus, *De scribenda universitatis rerum historia libri quinque* (Basel, 1551). He deals with the multiplicities of phenomena as with branches of the same tree: "non aliter, quam arborum dilatatos ramos ab uno et eodem trunco deduci conspicimus." And so he proceeds, "ut singula ex omni rerum multitudine ad unum aliquot constitutum caput . . . referrentur." See Cysarz, *op. cit.*, p. 122.

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history of literature and of art and it is a far-reaching and fruitful advance. For even without a realization of the rôle of the attitude as the organizing and form-giving power in the realm of our intellectual and emotional life, the historians of ideas, in their attempt to find themselves in the so-called character of the generation, were brought to an empirical handling of the generations—a treatment which amounted to an unconscious handling of attitudes. The same was, of course, to an extent true in regard to the treatment of centuries. But in the manipulation of centuries the rhythm had to be more abstract than in the manipulation of generations of living men.

One of the most interesting writers, although harmed by his eagerness to meet and to amalgamate divergent viewpoints, is Julius Petersen. In his *Die Wesensbestimmung der deutschen Romantik* he said in answer to his question of what constitutes a generation as a type that it is to be understood as a resultant of two factors—predisposition and education. These in their turn can be reduced to the interaction of the powers of inertia and change. Predisposition is our heritage from our ancestors. Without a romantic predisposition the type of the Romantic generation could never have developed.[1] The word *"Anlage"*, predisposition, is used in a vague and confusing way. In whatsoever manner we think and feel we are in a sense potentially predisposed to do so, that is, we have such a potential capacity. The circumstance, however, of the development of a particular potential capacity at a particular time and the accentuation of it at that time to the exclusion of other potential capacities is hardly a case of heredity. If it were, it would have been independent of the *Zeitgeist*.

Romanticism is not a mere capacity, it is a definite organization of capacities; and what organizes them is our attitude.

[1] "Der Generationstypus ist aus den zwei Faktoren *Anlage* und *Bildung* zu erklären, die wieder zu der Wechselwirkung von Beharrlichkeit und Veränderung zurückzuführen. Die Anlage ist Erbteil der Vorfahren. Ohne romantische Anlage kann der Generationstypus nicht zur Entfaltung gelangt sein, aber ebensowenig kann bei allen in den Jahren 1770 bis 1780 geborenen Kindern mit einem Male eine romantische Veranlagung hervorgetreten sein, die der vorhergehenden Generation völlig gefehlt hätte." Julius Petersen, *Die Wesensbestimmung der deutschen Romantik* (1926), pp. 142-143.

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It is true enough that attitudes are transmitted, but they are transmitted by our education and changed by our contacts and experience, not by heredity. How otherwise would one explain the fact that men and women of such different heredities composed the Romantic movement? Von Hardenberg, Dorothea Mendelssohn, the Schlegels, Schleiermacher, Rahel Levin and Boisserée, Brentano, the Grimms, von Savigny, Schelling and Tieck, presumably represent a wide gamut of hereditary "predispositions". Besides, whatsoever hereditary characteristics they had they inferentially got from their fathers who nevertheless thought and felt quite differently!

There was once, we have been told, a man who eventually learned to his surprise that for forty years he had talked in prose. Our academic learning may also be shocked to learn that throughout its existence, consciously and unconsciously, it has dealt in nothing else but attitudes. But where attitudes grow in such profusion and men of learning are busier than bees, hybridization is inevitable. Thus very seldom do we find perpetuation of stable types true to name; rather does this garden of learning produce untold numbers of hybrid attitudes. In most cases the process is unconscious, but sometimes, as in the case of Petersen, it is a quite conscious effort.

Petersen himself wonders whether it is possible or feasible to combine different approaches[1] ("*Methoden der Betrachtungsweise*"—as he calls it), but he makes a valiant effort to do so. Thus he tries to combine the hereditary tribal attitude with the social attitude and puts these two on the same horizontal plane representing the *Volksgeist*. This *Volksgeist* is periodically affected by a perpendicular impulse of the

[1] "Der Versuch, die in den vorausgehenden Erörterungen gewonnenen Ergebnisse abschliessend zusammenzufassen, steht von vornherein vor der Frage, ob es überhaupt möglich ist, so verschiedenartige Methoden der Betrachtungsweise einer Einigung im Gesamtbilde zuzuführen. Die stammesgeschichtliche Betrachtung mag naturwissenschaftlich genannt werden, die ideengeschichtliche ist philosophische, die stilkritische ästhetische, die gesellschaftliche soziologisch, die generationsmässige historisch. Ein parallel gehendes Nebeneinander dieser Blickrichtungen kann niemals zu einem Ganzen führen, wenn es nicht gelingt, eine Konvergenz herzustellen, indem zwischen den gewonnenen Begriffen Beziehung gefunden und ihre gegenseitige Abhängigkeit und Wechselwirkung erkannt wird." *Ibid.*, p. 171.

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Zeitgeist. The parallellogram of these forces can only be measured in a time series of generations whose very substance is a composition of *Volksgeist* and *Zeitgeist.* The generations measure the length, the *Volksgeist* the breadth, the *Zeitgeist* the height, and thus one gains a picture of a three-dimensional play of forces involved.[1] A very ingenious composite picture is produced by this amalgamation. But since *Volksgeist* discussions were merely entertaining post-prandial talk, Petersen's formula is flavored with the same delightful quality. What, however, Petersen does not see is that if the *Volksgeist* has any meaning, it can only mean the conventional, by and large the general attitude of the people, and if the *Zeitgeist* has any meaning it means the particular attitude of the times, and the generation can only signify a still further narrowed down attitude of a closer and more definite unit.

In the actual concrete handling of the subject, however, Petersen combines with his formula traditional geneticism, which links Romanticism with the Weimar circle, with the result that the "generation" element of his formula loses its significance. For the meaning of a new generation as differentiated from the former generation is antithetic—hence its passion, and it is the passion that produces and characterizes a movement. Romanticism is not a mild, smooth and oily "transition". Treat a great passionate movement academically and genetically and you rob it of its *raison d'être,* it loses the breath of life, the glow of struggle. Against what is the struggle?[2] It is obviously against the prevailing attitude of the older generation. Therefore, this friendly amalgamation

[1] *Ibid.*, pp. 171-172.

[2] "Aus der Gleichrichtung aller geistesgeschichtlichen Erscheinungen lässt sich schliesslich eine Zussammenfassung gewinnen. Die Romantik erweist sich dann als eine infolge umformender Generationserlebnisse einsetzende irrationalistische Steigerung und Aufhebung des klassischen Gleichmasses, wodurch die Spannung zwischen den Polen unbegrenzt erhöht wird. Sie ist eine europäische Zeiterscheinung, die aber in Deutschland durch den Zusammenfall mit der klassischen Höhe eine besonders glückliche und anspruchsvolle Entwicklungsbedingung findet und zur Notwendigkeit wird durch die deutsche Eigenrichtung, den unruhvollen Werdensdrang des deutschen Geistes, der zur Selbstbesinnung gebracht wird unter besonderer Teilnahme der unverbrauchten Jugendlichkeit ost-deutscher Stämme." *Ibid.*, p. 180.

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of divergent approaches fails to refract the storm and stress of life. Was it not Schiller who said that thunder can be broken up into minor sounds and these used for a lullaby to put babies to sleep? Must we deal thus with the thunderbolts of counter-revolutionary and counter-rationalistic Romanticism—only to put academic audiences to sleep?

Men who have thoughtfully studied the past, as well as men who have keenly observed their own times, have not been strangers to the idea of the antithetic juxtaposition of succeeding generations. It is not improbable that shrewd and concrete observations of this kind underlay the abstract structure of Hegel's dialectic logic. In literature one only has to mention Turgeniev's *Fathers and Sons,* in which he models in relief a heroic frieze representing no battle of Amazons but a conflict of ideas, of fundamental attitudes, a conflict of generations.

The man, however, who is now invoked as having made a serious study of a generation and so approached the group of the early German Romanticists, is Wilhelm Dilthey. In his essay on Novalis, first published in the *Preussische Jahrbücher* in 1865, he takes the eminent authors of the group and shows that they were born between 1767 and 1775. To Dilthey the generation of the early Romanticists was a circle of individuals who, influenced in their most susceptible age by the same fundamental facts and changes, became a homogeneous unit in spite of other differences in their lives. Nowadays Dilthey is often referred to as a great German philosopher, a founder of a school with innumerable followers. Dilthey was a distinguished scholar, but he was placed on no such pedestal in his lifetime: his influence as a writer was moderate. His concept of the intellectual meaning of a generation did not influence others during his lifetime, and these others are not to blame. As a matter of fact Dilthey's concept did not affect his own works—with the doubtful exception of his life of Schleiermacher, which is but a continuation of his study on Novalis and early Romanticism, and even there this concept is but a statement rather than a mode of handling the subject.

The idea of a "generation" and of the educational and

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social conditions which give to a generation its particular character is a most suggestive one. There can be quoted from Dilthey many passages which seem to indicate this particular approach to the history of a cultural situation. And yet the actual performance—not the formulation of the idea, but the historical presentation of the Romantic generation as we find it both in Dilthey's Novalis essay and in the chapter of Schleiermacher's life on "*Die dichterischen Genossen*"—does not justify the aroused expectations. There are different possible explanations. Dilthey's inability to accomplish what he apparently conceived may suggest a tragedy of more far-reaching significance than his own success or failure. It could be said that, if Dilthey failed, his failure served to prove, to supplement and illustrate his own fundamental idea. For the difficulty with Dilthey may have been that he himself belonged to a generation molded in definite ways by definite though unconscious attitudes. Though his conscious approach to a generation as one seemingly different from that of its predecessors is apparently clear, he handles *genetically* the ideas of the generation that he studies. Dilthey has all the knowledge and all the details at his disposal, but his use of the material and his placement of the accents fail to present in a plastic way the impetus of that great generation with which he dealt. It reminds one of Faust's experience with the "*Geist der Erde*":

> Hab' ich die Kraft, dich anzuziehn, besessen,
> So hatt' ich dich zu halten, keine Kraft.

All that needs to be accentuated to bring out the meaning of the Romantic generation is there, but one has to look for it as for a needle in a haystack—and even when the needle is found it naturally does not characterize the haystack. In talking about Novalis' *Heinrich von Ofterdingen* Dilthey tells us that the novel is directed against the rule of presumptuous reason and invokes poetry to save the world.[1] In Dilthey's

[1] "Die Herrschaft des anmassenden Verstandes muss überwunden werden, die goldene Zeit zurückkehren, die Poesie bereitet die Erlösung der Welt vor." Dilthey, *Das Erlebnis und die Dichtung* (2te Auflage, Leipzig, 1907), p. 326.

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work on Schleiermacher he quotes a letter in which Schleiermacher tells us that he wishes the Devil would take one half of all the reason (*Verstand*) that is in this world, if we could get in return but a quarter of the fantasy which we lack on this beautiful earth.[1] Here is the needle in the haystack. Add to that Schelling's frankly and almost contemptuously antagonistic estimate of Kant and we have here the general character and drive of the generation, its antagonism to Rationalism and the Enlightenment — an antagonism which was indicated by the conditions of the time and by the situation that developed after the French Revolution. But it is not a movement marching in a straight line, for it radiates in all sorts of directions.

Of course a new generation does not begin by inventing the alphabet, but what it carries over from the older generations does not characterize it. Its new outlook does. This new outlook is brought out in its struggle against the old which it must overcome to assert itself and bring its contemporaries to their own version and vision of the world. It is this element of psychological probing of the purport of the *new* that is either misplaced or not to be found in Dilthey. Still to Dilthey belongs the credit of at least naming German Romanticism an intellectual generation.

Today we are very much interested in the problem of the generation. At least in the history of literature and of art the significance of the concept of the generation has attracted wide attention. This interest of our contemporaries brought to the fore earlier works where this relatively new concept was either mentioned or actually used. Thus we became aware of the earlier writings of Dilthey and could not help being impressed by the apparent lucidity of his concept. But, reading Dilthey, we failed to realize that his attitude and ours differed too widely, that his own seemingly clear-cut description of a generation had for him a meaning quite different from that which the same sentences have for us. The subject is as

[1] "Ich wollte der Teufel holte die Hälfte alles Verstandes in der Welt; meine Quota will ich auch hingeben, wiewohl ungern; und wir könnten dafür nur den vierten Teil der Phantasie bekommen, die uns fehlt auf dieser schönen Erde." Wilhelm Dilthey, *Leben Schleiermachers* (Berlin, 1870), p. 265.

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fundamental as it is tragic. The same text may have different meanings, different connotations and different implications and serve quite different purposes for different people with different attitudes and pursuing different objectives. Anyone, for instance, who shares our attitude could not very well read Dilthey's definitions of a generation, could not read about common childhood, common early experience, common manhood, common outward social and political conditions,[1] without seeing in this makeup of a generation the makeup of an attitude that controls life and differentiates one generation from the other. His language does not suggest anything else, but the actual performance does.

But we fear that our attitude made us see in Dilthey what Dilthey was never quite conscious of. To Dilthey historical chronology, the numerical reckoning of time, was an outward proposition and he substituted for it a concept of contemporaneity which would imply inner homogeneity. This concept was that of generations. These generations, however, are to him nothing but links in a chain of continuity.[2] The concept of

[1] "Die intellektuelle Geschichte Europas seit Thales, dem ersten wissenschaftlichen Forscher, dessen Name und Verdienst sich erhalten hat, umfasst nur 84 Generationen; wir sind von der letzten Blüte der Scholastik kaum durch 14 Generationen getrennt. Generation ist alsdann eine Bezeichnung für ein Verhältnis der Gleichzeitigkeit von Individuen; diejenigen, welche gewissermassen nebeneinander emporwuchsen d.h. ein gemeinsames Kindesalter hatten, ein gemeinsames Jünglingsalter, deren Zeitraum männlicher Kraft teilweise zusammenfiel, bezeichnen wir als dieselbe Generation. Hieraus ergibt sich dann die Verknüpfung solcher Personen durch ein tieferes Verhältnis. Diejenigen, welche in den Jahren der Empfänglichkeit dieselben leitenden Einwirkungen erfahren, machen zusammen eine Generation aus. So gefasst, bildet eine Generation einen engeren Kreis von Individuen, welche durch Abhängigkeit von denselben grossen Tatsachen und Veränderungen, wie sie in dem Zeitalter ihrer Empfänglichkeit auftraten, trotz der Verschiedenheit hinzutretender anderer Faktoren zu einem homogenen Ganzen verbunden sind. Eine solche Generation bilden z.b. A. W. Schlegel, Schleiermacher, Alexander von Humboldt, Hegel, Novalis, Friedrich Schlegel, Hölderlin, Wackenroder, Tieck, Fries, Schelling. Und in diesem Sinn bildet dann eine Generation eine Zusammenordnung von Erscheinungen zu einem dem erklärenden Studium zu unterwerfenden Ganzen." Dilthey, *Werke*, vol. V, p. 37.

[2] "Die Folge der Generationen, welche die europäische Wissenschaft geschaffen haben, bildet, in gewissen Grenzen die Sache verstanden, ein durch Kontinuität verbundenes Ganzes. Der wichtige Begriff der historischen Kontinuität zeigt auf jedem Gebiet ein anderes Antlitz. Die Kontinuität des

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a generation is not designed here to differentiate generations, to express struggle, negation and opposition, but to present homogeneous links in a chain of transmission. That is why Dilthey saw in Schleiermacher's moral and religious world the ideals and ideas of Lessing and of Goethe,[1] and in the systems of Schelling and Hegel but a solution of a problem advanced by Kant in the light of the world-view of Goethe.[2] Dilthey, indeed, expressed well his own approach and his historical technique when he coined the expression — *"der Erbgang der Generationen"*.[3]

At the risk of tediously reiterating the same thing, let us repeat that we cannot escape our heritage. We obviously start with a situation and an attitude, neither of which is of our making, and from there we proceed. Now it is this procedure that is under scrutiny: is it a straight-line continuation or does it represent departures? By looking upon the departures as

wissenschaftlichen Geistes beruht auf der völligen Übertragbarkeit von Vorstellungen und Begriffen von dem Denker, welcher eine Wahrheit gefunden, auf denjenigen, dessen Fassungskraft der Aufgabe des Verständnisses derselben angemessen ist. Hierauf beruht, dass sich, die Umstände sonst gleichförmig angenommen, die Wahrheiten summieren, in jeder Generation vermehrt werden, die Wissenschaften also ganz kontinuierlich fortschreiten würden." *Ibid.*, p. 38.

[1] "Ich stehe hier, obwohl ungern, still vor der wissenschaftlichen Begründung, welche das in Lessing und Goethe entwickelte Lebensideal in Schleiermachers Lehre von der Individualität, der bildenden Sittlichkeit, den grossen Formen der sittlichen Welt erhielt." Dilthey, *Die dichterische und philosophische Bewegung in Deutschland 1770-1800, Werke*, vol. V, p. 25.

[2] "Und zwar unternehmen nun die Systeme von Schelling und Hegel, das Problem, welches Kant gestellt hatte, durch die Weltansicht zu lösen, welche Goethe geschaffen hatte. Was mir in der Erfahrung gegeben, ist nur die Welt der Erscheinungen. Diese Erscheinungen entstehen, indem die Aussenwelt mir gegeben ist durch die Formen meiner Anschauung und die Funktionen meines auffassenden Verstandes. Wie sie wäre, nicht in Raum und Zeit angeschaut, nicht durch die Funktionen meines Verstandes gedacht, wie sie an sich selber wäre, ist aller Erkenntnis entzogen. Diese Lehre—sagen Schelling und Hegel —beruht auf einer Voraussetzung: der Annahme von der Heterogeneität meines erkennendes Vermögens und seines Gegenstandes. Ist aber der Geist nur die zum Bewusstsein ihrer selber gekommene Natur, ist er also identisch mit der Natur: als dann werde ich in den Kategorien meines denkenden Vermögens zugleich die realen Kategorien der Weltentwicklung haben. Und hier erhebt sich das grossartige logische Weltsystem Hegels. Hier ist unsere Grenze. Das war das Werk der dritten Generation." *Ibid.*, p. 26.

[3] Dilthey, *Einleitung in die Geisteswissenschaften* (1922), p. 44.

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mere accumulation of spiritual riches in the "*Erbgang der Generationen*", we emphasize continuity but overlook the psychology of struggle that these departures present. The "*novum*" is not a simple windfall in terms of an "*Erbgang der Generationen*". It implies an emancipation from the inherited, it presages a struggle on the marketplace for recognition, for "a place in the sun". The failure to recognize the antagonism in the attitudes of generations is a failure to understand their life and their contribution.

In German literature Dilthey had a predecessor in Ranke. Ranke expressed himself on one occasion as conceiving history to be a chain of generations, but the experienced and penetrating eye of the great historian saw the forward movement and development of the world in the opposition and conflicts of these generations "*in deren Gegensätzen die Weltentwicklung weiter fortschreitet*".[1] On the other hand, Ranke also never applied this insight as a historical approach and never attempted to write a history in terms of generations. Ranke's idea remained a counsel of perfection.

Ottokar Lorenz, who built his "*Generationslehre*" on the above quotation and a few chance remarks of Ranke, intimates that Ranke perhaps failed to reorganize history in accordance with this generation concept of his, because he was sensitive to the opinion of his contemporaries and hated to differ drastically from them.[2] Lorenz had the advantage of knowing Ranke, but this remark of his does not carry conviction. Had Ranke really seen a way of shedding an entirely different light on history, it would be in opposition to all our human experience to assume that he would continue writing in ways

[1] "Es wäre vielleicht überhaupt eine Aufgabe, die Generationen, soweit es möglich ist, nach einander aufzuführen, wie sie auf dem Schauplatze der Weltgeschichte zusammengehören und sich von einander sondern. Man müsste einer jeden von ihnen volle Gerechtigkeit widerfahren lassen; man würde eine Reihe der glänzendsten Gestalten darstellen können, die jedesmal unter einander die engsten Beziehungen haben, und in deren Gegensätzen die Weltentwickelung weiter fortschreitet: die Ereignisse entsprechen ihrer Natur." Leopold von Ranke, *Sämtliche Werke*, Bd. 33, *Geschichte der romanischen und germanischen Völker von 1494 bis 1514* (Dritte Auflage, Leipzig, 1885), p. 323.

[2] Ottokar Lorenz, *Leopold von Ranke* (Berlin, 1891), p. 167, footnote.

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contrary to his new light and his inner convictions. In fact one could not do so. It is more sensible to assume that the remarks of Ranke, as in the case of Dilthey, had for him slightly different connotations than they have for us, that he opposed the division of history into abrupt periods and substituted for it a chain of small changes which implied differences in the ideas and situations of generations but in the main constituted one historico-genetic chain. So conceiving history he was true to himself in writing as he did, for the function of his generation concept was to combat abrupt periodological divisions. This was quite in keeping, incidentally, with the attitude of Ranke's own generation!

In our days the concept of the "generation" begins to have a different meaning. Take, for instance, the observations of the popular Spanish philosopher, José Ortega y Gasset. "The generation", he tells us, "is a dynamic compromise between mass and individual, and is the most important conception in history. It is, so to speak, the pivot responsible for the movements of historical evolution."[1] He seems to take the naturalistic imagery seriously:

> A generation is a variety of the human race in the strict sense given to that term by naturalists. Its members come into the world endowed with certain typical characteristics which lend them a common physiognomy, distinguishing them from the previous generation. Beneath this general sign of identity, individuals of so diverse a temper can exist that, being compelled to live in close contact with one another, inasmuch as they are contemporaries, they often find themselves mutually antipathetic. But under the most violent opposition of "pros" and "antis" it is easy to perceive a real union of interests. Both parties consist of men of their own time; and as great as their differences may be their mutual resemblances are still greater. The reactionary and the revolutionary of the nineteenth century are much nearer to one another than either is to any man of our own age.[2]

[1] José Ortega y Gasset, *The Modern Theme*, translated by James Cleugh (London, 1931), p. 15.

[2] *Ibid.*, p. 15.

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We are quoting this extreme accentuation of the significance of the generation to show how far we have traveled from the days of Dilthey. This statement certainly sounds extravagant enough, but its colored over-emphasis is not its major difficulty. The social history of mankind is not a natural history. The statement that a generation is a special variety or species is hardly of much use to the historian. If, on the other hand, we should treat a country from a biological or anthropological point of view, we certainly could not treat each generation as a separate "species"! If we deal with the generations from a cultural and social point of view, we presumably desire to understand the development and how it came about. Does Ortega y Gasset help us to understand this succession of different "varieties" of men and women that his "generations" represent? Hardly.

If one is to criticize Ortega y Gasset, the critique can, like all criticism, in the plenitude of its wisdom be very unflattering to the Spanish scholar. For as a "scholar" he is a failure. But his extraordinary popularity has a different justification: in the realm of social and political exhortation he is a creative mind, and creation—as God well knows—is a reckless procedure! What Ortega y Gasset does is to take the generation concept as a natural fact and from this "fact" he draws social and political conclusions, and does so by using other concepts with very slight regard for their conventional meaning and established connotations. Thus we read:

> If the essence of each generation is a particular type of sensibility, an organic capacity for certain deeply rooted directions of thought, this means that each generation has its special vocation, its historical mission. It is under the strictest compulsion to develop those tiny seeds and to give the existence of its environment a form corresponding to the pattern of its own spontaneity. But generations, like individuals, sometimes fail in their vocation and leave their mission unachieved. There are in fact generations which are disloyal to themselves and defraud the cosmic intention deposited in their keeping. Instead of resolutely undertaking their appointed task they remain deaf to the urgent summons of the vocation that is really theirs

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> and prefer a supine reliance on ideas, institutions and pleasures created by their forbears and lacking affinity with their own natures. It is obvious that such dereliction of historical duty cannot go unpunished. The guilty generation drags out its existence in perpetual division against itself, its essential life is shattered.[1]

Here we learn that there are destinies to which we can be disloyal, cosmic intentions that we can defraud, organic developments that can be declared in default. But, after all, these concepts are conventional building blocks with which we build our mental structures. Ortega y Gasset is excited about his structure and is not particular about the standard type of his material.

Similar in some respects, diametrically opposed in others, is the truly brilliant book of Pinder on the problem of generation in the history of art. No matter how many its faults or inadequacies may be, it is a most important work of lasting significance. Its main contribution is the non-contemporaneity of what is contemporary and, vice versa, the contemporaneous quality of what belongs in terms of time to different ages—the exact opposite of the Ortega y Gasset idea of the generation. He emphasizes the difficulty of relating the artist or thinker to his "time" and of measuring him by the straight time-line. As a matter of fact, the times we live in are not so simple, for the inner experience and reactions of different individuals within the same historical time-period may be quite different—and their *inner times* may belong to quite different outward decades or periods. Each one lives with contemporaries and with men of different generations in a world of endless possibilities. To each one the same given time is different in terms of his own inner age (*"ein anderes Zeitalter seiner selbst"*) that he shares with the like-minded.[2]

These considerations of Pinder, considerations which no one could treat lightly, create a new situation: a generation as a polyphonic chorus, an infinitely more realistic and more

[1] *Ibid.*, p. 19.

[2] W. Pinder, *Das Problem der Generation in der Kunstgeschichte Europas* (Berlin, 1928), pp. 5 and 11.

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serviceable approach to any history in terms of generations. It sheds welcome light on the very difficult problem that every historian faces—the problem of so-called precursors of movements and of contemporaries who in no wise fit into a given popular movement. On the other hand, Pinder takes outward synchronization very seriously, and because of this he is quite impressed with Hans von Müller's systematic attempt at a chronology of German authors,[1] simple and few as its ideas are. And again Pinder is right, for the mere data presented by Müller offer food for thought. Dessoir, in reviewing Pinder's book,[2] pointed out that the generation concept is not new and that he himself applied it thirty or more years ago. This is true, but a glance at Dessoir's approach of 1894 [3] would indicate the signal advance which Pinder's observations present. Pinder's brilliant work, to which we cannot do justice here, suffers from too great a sophistication. He is dubious about psychological understanding as well as about the determining significance of outward conditions of the *milieu* [4] —a case where, in the dimness of Romantic twilight, skepticism cannot be distinguished from mysticism.

Another attempt to deal with the generation problem, elementary and simple compared with Pinder's, is that of

[1] Hans von Müller, *Zehn Generationen deutscher Dichtung und Denker* (Berlin, 1928).

[2] Max Dessoir, *Zeitschrift für Aesthetik und allgemeine Kunstwissenschaft*, Bd. 23 (1929), pp. 348-350.

[3] "Unser Gesamtwerk teilt zunächst den Zeitraum der letzten hundertundfünfzig Jahre nach dem Massstabe einer von innen abmessenden Vorstellung ein, nämlich dem der Generation. Verstehen wir unter Generation eine Gleichzeitigkeit und Gleichartigkeit von Individuen, deren Schaffensperiode durch dieselben grossen Thatsachen bedingt ist, so können wir in der Entwickelung der deutschen Psychologie drei Zeiträume unterscheiden. Von 1740 etwa bis 1790 reicht eine Zeit emsiger Sammelforschung, von 1790 bis 1840 umgefähr die Herrschaft der Spekulation, und von 1840 bis zur unmittelbaren Gegenwart das Anwachsen des naturwissenschaftlichen Geistes. Innerhalb eines jeden solchen Ganzen besteht nun eine Höhenepoche von annähernd dreissig Jahren; sie wird in der Darstellung besonders berücksichtigt werden, weil von ihr aus am besten das Gerüst des geistiggeschichtlichen Aufbaus zu überblicken ist." Max Dessoir, *Geschichte der neueren deutschen Psychologie* (Berlin, 1894), vol. I, p. ix.

[4] Pinder, *op. cit.*, p. xxix.

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Wechssler. To him the stamp which the "*Jugendgemeinschaft*" puts on its members is the stamp of the generation. Common are their hopes, for in common they share the needs of their time and its struggles. To Wechssler the deeds and sufferings of the genuine spirit of youth form the "true" content of universal history, etc.[1] This community of youth produces a definite spirit of a generation, inseparable from the spirit of a people, which, so far as we can make out, always preserves the same character. So he devotes a curiously arranged book to the spiritual differences of the Germans and the French,[2] and follows there as elsewhere the line of national spiritual continuity.[3]

In a sense these works are sociological contributions, but it is not even amusing to see in Schelling, Tieck, Schleiermacher, Friedrich Schlegel, as well as in Hegel, continuations and reincarnations of Meister Eckehart's German mystic thought.[4] Happily German sociological thought of our generation is decidedly polyphonic, and the same German thinkers of the Romantic period are quite differently viewed in the thoughtful studies of Karl Mannheim. We are in complete agreement with Mannheim when he states that "Romanticism is in its origin as well as in its inner structure first of all a countermovement directed against Enlightenment." [5]

This viewpoint, although more mildly expressed, we find in the work of Kummer, who was one of the first to arrange in generations the story of German literature of the nineteenth century.[6] Richard Meyer may be classed as Kummer's predecessor for he attempted to divide the history of literature

[1] Eduard Wechssler, "Die Generation als Jugendgemeinschaft", *Geist und Gesellschaft*, Kurt-Breysig, Festschrift (Breslau, 1927), vol. I, pp. 74-75.

[2] Wechssler, *Esprit und Geist* (Bielefeld und Leipzig, 1927).

[3] Wechssler, "Die Auseinandersetzung des deutschen Geistes mit der französischen Aufklärung", *Deutsche Vierteljahrschrift* (1923), Heft 4, pp. 613-635.

[4] *Ibid.*, pp. 628-630.

[5] Karl Mannheim, "Das konservative Denken", *Archiv für Sozialwissenschaft und Sozialpolitik*, vol. 57 (1927), pp. 111-112.

[6] Friedrich Kummer, *Deutsche Literaturgeschichte des 19ten Jahrhunderts dargestellt nach Generationen* (Dresden, 1909), pp. 45-46 *et seq.*

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into decades. This attempt met with such unfriendly criticism that in his third edition he abandoned his decades and gave his book a more conventional appearance. In the treatment of Romanticism he is also behind Kummer: he fails to recognize the social and political elements, but views Romanticism largely as a reaction to the "*Weimarische Aesthetik*".[1] The other predecessor whom Kummer quoted is Bartels, but he is only interesting for his faith in numerical laws of spiritual development, laws that he believes could be discovered in the chronology and data of literary generations. In so far as this may have any meaning, it is but a queer German translation of French positivist thought.[2]

In his study, *Das Problem der Generationen,* Mannheim characterizes the German approach to the general problem as Romantic and historico-genetic, while the French approach is largely positivist.[3] In the laws of biology the positivist savants tried to find laws governing our spiritual life, our "*Geistesleben*", laws that would determine the rhythm of history. Such generalizations must of course be taken *cum grano salis,* and Mannheim realizes it. So, for instance, did the German scholar, Chancellor Rümelin, approach the concept of the generation in a purely statistical and largely biological fashion.[4] By and large, however, German thought was characterized by its historico-romantic attitude, while French thought followed

[1] Richard Meyer, *Die deutsche Literatur des 19ten Jahrhunderts* (Berlin, 1900), p. 6; third edition (1906), p. 6, pp. 45-47.

[2] Adolf Bartels, *Die deutsche Dichtung der Gegenwart* (9te Auflage, Leipzig, 1918), pp. 4-5. It originally appeared in the *Grenzboten* (1896) and was published separately in 1897.

[3] "In Frankreich wurde zur Dominante das positivistiche, aus den Aufklärungstraditionen unmittelbar fliessende Denken. Es beherrschte dort nicht nur die Naturwissenschaften, sondern fundierte auch die Geisteswissenschaften. Es wurde nicht nur von den oppositionellen Tendenzen getragen, sondern durchdrang auch Konservatismus und Traditionalismus. Ganz umgekehrt war die Gesamtlage in Deutschland, wo stets die von konservativen Impulsen getriebene Romantik und der Historismus das Heft in der Hand behielten." K. Mannheim, "Das Problem der Generationen", *Kölner Vierteljahrshefte für Soziologie,* vol. VII (1928), p. 162.

[4] Gustav Rümelin, "Über den Begriff und die Dauer einer Generation", *Reden und Aufsätze* (Tübingen, 1875). See especially pp. 296, 300-301, 303-304.

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the road that led from Enlightenment to positivism and empiricism. Different attitudes not only indicate different handling of a problem; different attitudes ask and answer different questions. One attitude was interested in an organ of historical links of transmission, and found them in the "generations"; the other was interested in natural laws necessitating change and ordaining "progress", and tried to explain the chronology of events by data relating to birth and death and age-groups of the population. The starting-point was the possibly naïve quest after "laws" which were to be found in the time-tables of social life, and yet data were marshaled and adduced which deserve thoughtful consideration. What stands out in many attempts of this sort is that the "generation" as a carrier of change is not of the duration of thirty-odd years—the concept of the ancients as well as of Rümelin and others—but just of about half that period or even less.

A very instructive book for those who have no desire to plough through the large literature is the work of Mentré.[1] Among the early writers quoted by Mentré is Soulavie, who in 1809 published a book analyzing the political changes in public policy in eighteenth-century France. The duration of such policies was, according to the author, about fifteen years. Dromel's book on the *Lois des révolutions* (1861) also settles down to political periods of similar duration, for example: 1789-1800, 1800-1815, 1815-1830, 1830-1848. Mentré himself, while a strong believer in the significance of the generations, is for a non-dogmatic and elastic concept of a spiritual school which exists so long as its original leaders are active and powerful. The book is important for the variety of material that it contains.

It must be acknowledged that the discussions on the significance and function of generations have to a great extent advanced the study of the changing character and changing expressions of society. The advance, however, is seriously

[1] F. Mentré, *Les Générations sociales* (Paris, 1920). Incidentally, so far as literature is concerned, there is a good bibliography at the end of Mannheim's second article, *loc. cit.*, pp. 329-30.

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impeded by the lack of simplicity, the lack of insight into the very nature of the problem that is under consideration. Such lack of insight one unfortunately finds even among the most intelligent men who worked in the field. Take, for instance, Mannheim. He is quite impressed by the pluralistic eclecticism of Petersen's handling of German Romanticism, especially as it affects the so-called generation problem. So he endorses Petersen for dealing with the generation problem, not independently, but as affected by other historical factors. As such historical factors he names racial stock (*Stamm*), countryside, *Volksgeist, Zeitgeist,* society etc.[1] Leaving society out of the picture—for we are not sure what is implied by it—it is clear that, in dealing with local character and color, with the *Zeitgeist* and *Volksgeist* and generation, we are dealing with stratifications of precisely the same entity. This entity is the human attitude that controls man's thinking and feeling and life. Only when we realize this can we proceed to inquire into the formation, function, behavior and change of attitudes. It opens a vast field of fundamental inquiry within and far beyond the scope of social sciences and education, for wherever our mind goeth, the attitude goeth with it.[2]

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[1] "Es ist das Verdienst Petersens mit jenem historischen Monismus gebrochen zu haben, der den meisten Generationslehren anhaftet. Er versucht das Generationsproblem in Verbindung mit dem übrigen Geschichtsfaktoren (Stamm, Landschaft, Volksgeist, Zeitgeist, Gesellschaft, usw.) im konkreten Falle der Romantik zu behandeln." Mannheim, *loc. cit.*, p. 322.

[2] To be continued.

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THE EARLY DEVELOPMENT OF THE LAW OF CONTRABAND OF WAR II *

State Practices and Prize Courts

THERE are numerous early practices, particularly in the sixteenth century, which on the surface appear to be applications of the law of contraband of war. The foregoing analysis of the treaties, however, indicates that the idea of such a law was by no means well understood at that time. The early cases must therefore be handled with caution. Like the treaties, they undoubtedly served to develop the modern doctrines applicable to contraband of war, but it was very gradually indeed that this development took place.

It is dangerous and probably futile to make an exact appraisal of the early cases; samples of them will be given here as illustrative of trains of thought and state practices which are illuminating in so far as they reveal how and why the law developed along the lines which it eventually followed.

The difficulties with the earlier documents are in part due to the fact that they frequently speak of "prohibited goods". At times it is clear that a special prohibition is referred to; at other times, the list of "prohibited" goods is identical with somewhat later lists of "contraband", *eo nomine*.[80] Even so careful a scholar as Marsden seems to draw no distinction between the two groups of cases.[81] For example, we have in 1536 what Marsden labels "Proclamation as to Contraband". It authorizes any Englishman to seize any ship laden with

* The first part of this article was published in the POLITICAL SCIENCE QUARTERLY for December 1932, vol. XLVII, pp. 526-546.—ED.

[80] The "Lettres de Neutralité" from Henry IV of France to the Duke of Lorraine, dated June 19, 1596, permit free trade for merchants except for "marchandises prohibées par la Guerre": V Dumont, *Corps diplomatique* [hereinafter cited: Dumont], I, p. 527.

[81] In his *Law and Custom of the Sea* [Navy Records Society, vols. 49 and 50 (hereinafter cited as Marsden)], Marsden uses the word "prohibited" in the texts but in headnotes and index constantly uses the word "contraband".

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"victualls, or artillary, *or any other thing*", coming from France to Scotland.[82] The italicized words make it obvious that there was a general prohibition of all goods going to Scotland and that this was not a case of seizure of "contraband" only—in the modern sense.[83]

Attention has already been called to the fact[84] that as early as the thirteenth century, belligerents thundered in the air with proclamations forbidding anyone and everyone to trade with their enemies.[85] Such total prohibitions are obviously distinguishable from applications of the law of contraband of war, but their importance in the development of that law should not be minimized. There is not much evidence that these proclamations were considered even by their authors to rest upon legal principles, although the law of nations was freely invoked to like purpose in the time of Elizabeth. There were many instances of these total bans on trade[86] and we

[82] *Ibid.*, vol. I, p. 150. *Cf.* the case of *Hamp* v. *Mamsillion* (1551), Selden Soc. Publ., *Select Pleas in the Court of Admiralty*, vol. II, p. 19.

[83] In a footnote to this proclamation, Marsden notes that "In the war of 1544-45 the Emperor agreed with Henry VIII that his ships should not carry victuals or war material to the French, and a list of contraband goods was appended". In 1545 the Council requested the Lord Admiral to grant a safe-conduct to merchants of Bruges trading to France provided they do not carry "any thing prohibited" or cloak enemy's goods; Marsden heads this also "contraband". *Ibid.*, p. 160. See also *ibid.*, p. 190 for the same label applied to an item in which one is authorized to search for "wares prohibited to be transported withowte licence". Of similar nature is a safe-conduct issued by Emperor Charles V on May 18, 1525, "autorisant des marchands français a lever dans les Pays-Bas toutes les marchandises qu'ils voudront, excepté du blé, de l'avoine et d'autres grains, de l'artillerie, de la poudre, des boulets et autres munitions, de cuivre, des harnais, des arbalètes et autres choses pouvant servir à l'usage de la guerre, *marchandises de tout temps prohibées*." Dumas, *Jugement des prises maritimes en France* (1908), pp. 108-109, note.

[84] Jessup and Deák, "The Early Development of the Law of Contraband of War I", POLITICAL SCIENCE QUARTERLY (December 1932), vol. XLVII, p. 527.

[85] Grotius gives several examples in the fifteenth and sixteenth centuries: *De Jure Belli ac Pacis*, L. III, c. I, § 5. *Cf.* Nys, *Les Origines du droit international* (1894), p. 226.

[86] *Cf.* Elizabeth's edict in 1586 against all trade with the Flemish banks and the supplying of victuals and shipping materials to ports east of Rouen; Marsden, "Early Prize Jurisdiction and Prize Law in England", in 24 *Eng. Hist. Rev.* (1909), pp. 675, 689. Article 69 of the French Ordinance of 1584 repeats Article 42 of the Ordinance of 1543 (Lebeau, *Code des Prises*, vol. I,

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find them prominent in the Anglo-Spanish struggle of 1588-1604.

The position of Spain in 1588 was one of great difficulty. Although she brought large stores of precious metals from the Americas and the Indies, Burleigh could say:

> It hath bene in all former tymes known, and is notably known to all persons that haunt the navigation and cost of Spayn that without havyng of masts, boords, cabels, cordag, pitch, tarr and copar out of the Eastlands, all Spayn is not hable to make a navy redy to carry the meanest army that can be ymagined.[87]

The Spanish Armada was accordingly equipped by merchants of Hamburg, Lübeck, Dantzig and other Hanseatic towns and "several of the largest vessels of the Spanish fleet were bought from the Hansards."[88]

The English government objected to this trade of the Hanseatic towns. In November 1588 the Privy Council, by the queen's command, sent to them a vigorous protest against what they called "unfriendly action". The Council did not say it was illegal. They were urged

> to forbeare to send into Spayne or Portugal any kind of provision fitt for the maintenance of the king of Spayne for his warres against this realm, upon paine of confiscation of the same goodes and the shippes upon which they should be laden, in case they should be taken with any such warlyke provision by any of her majestie's shippes or of her subjects.[89]

A like warning was delivered to an ambassador from Hamburg who arrived in London. This was followed by stopping

pp. 16, 25), in authorizing friends and allies to trade in their own (not the enemy's) goods, excepting "munitions de guerre, dont ils vousissent fortifier nosdits ennemis". Such munitions were to be retained but paid for. Grotius [*op. cit.* (*supra*, note 85), n. (e)] seems to be correct in saying this gave merely a right of preëmption. Robinson [*Collectanea Maritima* (1801), pp. 123-126, note] looking back from the opening of the nineteenth century, tortuously explains that confiscation must have been intended. *Cf.* Söderquist, *Le Blocus maritime* (1908), p. 15.

[87] As quoted by Edward P. Cheyney in "International Law under Queen Elizabeth", 20 *Eng. Hist. Rev.* (1905), pp. 659, 662. Marsden (24 *Eng. Hist. Rev.*, pp. 675, 691) says the Dutch were equally involved. The trade was responsive to a proclamation of Philip's in 1585 stating that all ships bringing shipping materials to Spain and Portugal would be treated as friends.

[88] Cheyney, *loc. cit.*

[89] *Ibid.*

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and examining some Hanseatic ships off Dover.[90] In the next year, Drake and Norris were instructed "to seize any warlike goods intended for Spain found in neutral vessels."[91] The Hanseatic merchants, however, were not inclined to relinquish their profitable trade. In June 1589 a fleet of vessels from the Baltic sailed around the Hebrides and Ireland, arriving at the mouth of the Tagus just in time to meet the victorious British fleet leaving Lisbon. Some sixty ships were captured and taken back to England as prizes. The Privy Council issued a formal decree justifying the capture on the ground of the previous warning and the fact that the cargoes were composed of provisions and ships' stores. They also invoked their treaties and "the laws of nations". As a special favor of the queen, however, they ordered the confiscation only of "such things . . . which are manifestly of the proper nature of victualls and of munitions." They appended a list of these articles as follows:[92]

Munitions				*Victuals*	
Cables	Tallow	Brimstone	Ordinance	Bacon	Beanes
Masts	Pitchstones	Saltpeter	[not belonging	Corne	Peason
Anchors	Callyvers	Boulletts	to the ship]	Wheate	and
Cordage	Muskettes	Copper	Canvas	Rye	such
Pitch	Armour	Leade	Dantzig Poldaynes	Barley	like
Tarre	Powder	Matche		Meale	

The English also protested against the similar trade carried on by the Dutch and again warned that cargoes of provisions and munitions for Spain would be deemed good prize. Some Dutch ships were captured and the Dutch loudly complained[93] although they themselves had sought to stop all trade with the Spanish Netherlands and had captured English vessels bound

[90] *Ibid.* Three years earlier, a letter of reprisal issued to an Englishman against Spain, had authorized him to take "as lawfull prises all those which relieve them with victuall, or ayde them with munitions". Marsden, vol. I, p. 242.

[91] Cheyney, *loc. cit.*, p. 662. A proclamation to this effect was also issued in 1589. Marsden, in 24 *Eng. Hist. Rev.*, pp. 675, 692.

[92] Cheyney calls this "probably the earliest recorded list of articles declared contraband"; *loc. cit.*, p. 663.

[93] Cheyney, *loc. cit.*, p. 663, note 8; Marsden in 24 *Eng. Hist. Rev.*, pp. 675, 692.

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thither.[94] Protests came in also from the Hanseatic merchants and their governments. The Hanseatic towns, however, relied on their ancient charter privileges in England, a claim which was easily answered.[95] The English reply also adduced several precedents. In 1545, in the war between England and France, Hanseatic vessels which were taking supplies to the latter had been seized by England; Charles V had acknowledged that this was just and had forced the Hansards to desist from their trade.[96] Neutral trade had been prohibited in the recent Danish-Swedish war; Poland had asserted the same right against England in her war with the Muscovite; the Prince of Orange had insisted upon it against the Hansards. It was stated that, "These precedents are just, for the right of neutrality must be used in such a way that none in our alliance are injured. It is not rightfully used when by helping one ally we are injuring another who is equally in our alliance." [97] This argument may be contrasted with the familiar treaty provision that one party will aid the other against his enemies even if the latter are also his allies; Henry VIII had made such a treaty with Spain in 1510.[98]

This reply to the Hanseatic officials was followed by a proclamation drawn up by Burleigh, in which the English position is stoutly maintained:

> Her Majesty thynketh and knoweth it by the rules of the law as well of nature as of men, and specially by the law civil, that whenever any doth directly help her enemy with succours of eny victell, armor, or any kynd of munition to enhable his shippes to maintain themselves, she may lawfully interrupt the same; and this agreeth with the law of God, the law of nature, the law of nations, and hath been in all tymes practised and in all countries betwyxt prynce and prynce, and country and country.[99]

[94] Marsden, vol. I, p. 262, note (2). See also the same author in 24 *Eng. Hist. Rev.*, pp. 675, 688.

[95] Cheyney, *loc. cit.*, p. 664.

[96] Sweden had vigorously banned trade with Russian ports during her wars with the Muscovite and had maintained that provisions constituted the most important assistance to reinforce the enemy in time of war; see Söderquist, *op. cit.*, Annexes I and J.

[97] Cheyney, *loc. cit.*, p. 664. The text of the reply is printed by Robinson, *op. cit.*, p. 127.

[98] Jessup and Deák, *loc. cit.*, p. 531, note 14.

[99] Cheyney, *loc. cit.*, p. 664.

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With France, at this time, the English were negotiating an alliance and softer measures were therefore taken. The king of France was informed that "her majesty desyreth yt he will earnestly prohibit ye carriadge of any grain or other vittull into Spayne or Portugal." [100] The Dutch, being also at war with Spain, were also entitled to special consideration. Elizabeth issued a proclamation in 1590, reciting that the Dutch, despite their war with Spain, had continued their trade in provisions, munitions and shipping materials; that the English had endeavored to stop this traffic but were willing to satisfy the Dutch complaints. Dutch trade with Spain was therefore to be free subject to the following interesting proviso, which not only reads like modern contraband of war doctrine but also introduces, through the words italicized here, the notion of continuous voyage:

> They [the Dutch] shall not carry or cause to be carried, directly *or indirectly*, to the countries of Spain, Portugal, the Azores, *or other places and ports neighbouring or adjacent to Spain*, any kind of provisions, munitions of war, powder, artillery, arms, sails, cables, anchors, cordage, masts, peas, or other provisions for land war, or apparel or furniture for ships, (except only what shall be necessary for their own ships' use), upon pain of confiscation of the said ships, munitions, and other provisions.[101]

Mr. Cheyney says that this English policy was continuously pressed throughout the remainder of Elizabeth's reign and that the contemporary records are filled with cases of seizures and resulting conflicts. He notes, however, that these conflicts were often complicated with other disputes between England and the Continental states. He devotes special attention to a proclamation drawn up by the Council and issued on April 24, 1596 by the Earl of Essex and Lord Admiral Howard, the commanders of an expedition against Spain and Portugal.

> It was translated and printed in English, French, Italian, German, and Spanish, and distributed as widely as possible in the seaports of Spain and

[100] *Ibid.*, p. 665. *Cf.* Marsden, vol. I, p. 264, note. That the French acquiesced in this request is evident from the certificate in 1593 of the English prize court in the case of a French ship laden with wheat for Portugal in violation of the French king's commands. *Ibid.*, p. 282.

[101] Marsden, vol. I, pp. 262-263. There were further restrictions on the number and size of the ships that might engage in the Spanish trade. Italics ours.

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Portugal. It declared that, England being in amity with all nations except Spain, her majesty's navy had orders to refrain from injury to the persons and property of all men, except, in the first place, subjects of the king of Spain; in the second, such other persons as should give to that king "manifest aid with men, shippes, artillery, victuals, and other warlike provisions for invasion of her majesty." All the latter class of persons were required to remove their ships and contraband goods from all ports of Spain and Portugal. If they refused or neglected to do so, the commanders of the queen's navy would feel themselves at liberty to treat them as manifest aiders of the king of Spain and consequently open enemies of England. They would therefore, have no just cause of complaint or claim for restitution of such goods and ships as should be seized.[102]

The English proceeded to seize neutral ships bound for Spain and the neutral governments proceeded to protest. In 1597 an ambassador from Hamburg asked for the restoration of wheat shipped by Hanseatic merchants to Spain and seized at sea by the English. Possibly due to his intercession, in 1599, Elizabeth paid for the cargoes of several Hamburg ships which were brought in laden with corn.[103] On July 23, 1597 an ambassador from Poland arrived and protested vigorously against the interference with Polish commerce. Elizabeth answered him extemporaneously in Latin and in the course of her reply said:

You speak of the Law of Nations; but you ought to know that when kings are at war it is lawful for one side to intercept reinforcements or supplies sent to the other, and to see that no harm comes to them from that source. This, we maintain, is agreeable both to the Law of Nature and to the Law of Nations, and it has been the practice not only of ourselves, but also of the kings of Poland and Sweden in their wars with the Muscovites.[104]

Practically the same argument was repeated to the ambassador by the privy council shortly afterward.

A Danish embassy was the next to arrive; it was received in a more conciliatory spirit. Spain had been careful to stir up the northern neutrals in their complaints against the English, and Elizabeth's government found it necessary to be somewhat less aggressive.[105] Elizabeth assured the Danish

[102] *Loc. cit.*, p. 665.

[103] Marsden in 24 *Eng. Hist. Rev.*, pp. 675, 694.

[104] Zouche, *Juris et Judicii Fecialis sive Juris inter Gentes* (1650), translation by Brierly in Carnegie Classics of International Law (1911), p. 123.

[105] Cheyney, *loc. cit.*, p. 668.

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ambassador that she would right any wrongs which had been done to Danish ships and would give orders to prevent any further injustices. At the ambassador's request, a new list of "prohibited" and "licit" articles was drawn up by the privy council with the understanding that if the Danish king would prevent his subjects from carrying the former to Spain, the English would not disturb cargoes of the latter category. The list which follows clearly reveals the influence of the Danish interest; it is evident that the list would not have been equally satisfactory to Sweden since most ships' supplies were still under ban. It is equally clear that the articles now declared licit were no less useful to Spain than they had been when they were on the prohibited list.

Prohibited Articles		*Licit Articles*	
Cables	Pitch	Butter	Beanes
Cordage	Tarr	Cheese	Iron
Gunpowder	Saltpeter	Bacon	Steele
Hempe	Wheat	Stockfish	Copper
Mastes	Rye	Pease	Rosin
Ordinance	Meale of		
Sailyards	wheat or rye		

A friendly gesture was also made to Poland. Elizabeth still insisted on her right to confiscate goods destined to her enemies but was willing to have Polish subjects carry to Spain grain and all other goods except material of war.[106] The merchants of Venice and Tuscany were favored by a special proclamation in 1599, forbidding the spoiling of vessels of those countries.[107] In 1601 and 1602, English naval commanders were warned against undue interference with the French and other allies of Elizabeth.[108]

Nevertheless, while soft words were spoken to the neutral ambassadors, a sweeping proclamation was issued in 1601 (*circa*). Perhaps its language was designed to win neutral support for the English policy. After a recital of the per-

[106] *Ibid.*, p. 669.

[107] Marsden, vol. I, p. 300. The date is approximate.

[108] Cheyney, *loc. cit.*, p. 669. In 1601 a commission was appointed to deal with claims of the neutral countries: Marsden in 24 *Eng. Hist. Rev.*, pp. 675, 696.

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fidies of the Spanish, it is noted that the Spanish king cannot outfit great armies and navies without the help of others who are friends or allies of England and that "the stopping hinderance and impeaching of all commerce and traffick with him in his territories of Spaine and Portingall will quickly, in likelihood, give an ende to these bloudie and unnaturall warres, which disturbe the generall peace and quiet of all theise partes of Christendome. . . ." The queen, knowing that "in every commonwealth or kingdome the chiefest lawe of pollicy to bee regarded by the Souverain Commaunder is the safety and preservation of the kingdomes and people committed to his charge", forbids "all and every one, of what condition realme or land soever, none excepted, to lade, ship, carry, or transport by sea, directly or indirectly, under what coulor or pretence soever, any ships, goods, wares, or merchandises" to any place in the dominions of the king of Spain.[109] In order to prevent violations of the proclamation through ignorance, it was declared that it should not take effect for some months and that in the meantime it should be made known in other countries.

This proclamation was two years subsequent to an equally broad *Placaart* issued by the States General in 1599, forbidding all merchants to carry provisions or any other goods to Spain. Henry IV of France ordered his subjects to submit to this order for six months and other governments raised no objection, although the English, inconsistently enough, considered the *Placaart* "an effect of great necessity, which had no law."[110]

In 1601 also, the Lord High Admiral of England certified to the Tuscans and Florentines that since 1589, when the first list of prohibited articles was published,[111] "all grain, victuals, provisions, and war material in any ships, whether French, German, Danish, English, Scottish, or of any other nation",

[109] Marsden, vol. I, pp. 313, 314-315.

[110] Twiss, *The Law of Nations* (2d ed., 1875), p. 247 and authorities there cited.

[111] *Supra*, p. 65.

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destined for the dominions of the Spanish king, had been condemned by the admiralty court.[112] The Lord High Admiral perhaps had some reason for not alluding to the special concessions made to certain nations, or else these special agreements had not been observed in practice.

As a final indication of the Elizabethan position, attention may be directed to the proclamation of 1602 regarding the suppression of piratical acts, in which Elizabeth listed as justifiable causes of seizure of ships of friends, the carriage of enemy goods or of "marchaundizes of such nature or quallety as may serve to furnish the Kynge of Spayne, his armyes or navyes, and going into the kingdoms of Spayne and Portugall. . . ." [113]

There can be no question that the above practices and discussions show that at the end of the sixteenth century the idea was current that a belligerent might cut off supplies going to his enemy. The modern law of contraband of war was not, however, expressed at this period. When possible, the belligerent banned all trade with the enemy; when neutral pressure was too strong to permit him to do this, he confined himself to prohibiting trade in things most useful to the enemy. In all cases, munitions were obviously the most useful and the first to be banned. In the case of the English war against Spain, shipping materials and victuals were almost equally important and the ban upon them was maintained whenever practicable.[114] When neutrals protested too vehemently and it appeared that they would be driven to reprisals or alliance with the enemy, concessions were made. Both belligerents and neutrals made sweeping claims; neither admitted the propriety of the claims of the other. In the prize ordinances and the few available prize cases, enemy property is the principal basis for condemnation. Condemnations for carriage of "contraband" seem to be based entirely on the

[112] Marsden, vol. I, pp. 317-318.

[113] Robinson, *op. cit.*, pp. 21, 25.

[114] *Cf.* the discussion in 1543 between England and Scotland as to whether sending a cargo of fish from Scotland to France was a violation of the Scotch treaty obligation not to "aid" the enemies of England: Twiss, *op. cit.*, p. 246.

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theory that proclamations had decreed that penalty for that particular traffic.[115]

It will be recalled that the treaty of peace between England and Spain in 1604 contained two articles which present the contraband idea in embryonic form.[116] In that treaty Spain agreed that provisions must not be carried to the enemies of England but nothing was said expressly about naval supplies. It has also been noted that the first treaty to present the contraband idea in comparatively full development, is that between the English and Dutch in 1625.[117] As pointed out, this treaty is in effect a bilateral declaration of the position which Elizabeth took during the war with Spain, and was concluded as an alliance against Spain. The contraband list in the treaty is not as explicit as the Elizabethan lists, but broad phrases are used which cover all the same articles.

This Anglo-Dutch treaty was supplemented by two proclamations of Charles I of England, which carry on the Elizabethan ideas. The first, issued on December 30, 1625, forbids the transport of "corne, victual, armes, or provision for his shipping, navye, or armes" to Spain or to Spanish subjects, on the ground that "itt is neither agreeable with the rules of policie, or law of nations" that the king of Spain be supplied with such articles. The proclamation is addressed particularly to the merchants of the Hanseatic towns and of the northeast countries, who are warned that carrying the prohibited goods will subject their ships to capture and condemnation as good prize.[118]

The contraband list in this proclamation did not go beyond that contained in the Dutch treaty, but we may assume that the English ships were capturing, and the English prize courts condemning, a wider range of products, since on March 4 of

[115] Marsden cites two cases — the *Jane* and the *Margaret* — in which ships were condemned at this period for carrying corn to Terceira: "Early Prize Jurisdiction and Prize Law in England. II", 25 *Eng. Hist. Rev.* (1910), pp. 243, 256.

[116] Jessup and Deák, *loc. cit.*, pp. 532-33.

[117] *Ibid.*, p. 535. *Cf.* Twiss, *op. cit.*, p. 249.

[118] Robinson, *op. cit.*, p. 54 *et seq.* The date of this proclamation is given by Marsden as December 31, 1625. 25 *Eng. Hist. Rev.*, pp. 243, 252.

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the following year, a second proclamation was issued to remove the pretext of ignorance as to what goods were prohibited. The new list was much more extensive:

Concerninge therefore those kindes wherewith his Majestie maie not suffer his said enemyes to be furnished, his Majestie doth by theis presents publish and notifie that he houldeth theis things following, to be of that quality and condition, videlicet, ordinance, armes of all sortes, powder, shott, match, brimstone, copper, iron, cordage of all kindes, hempe, saile, canvas, danuce pouldavis, cables, anchors, mastes, rafters, boate ores, balcks, capraves, deale board, clap board, pipe staves, and vessels and vessel staffe, pitch, tarr, rosen, okam, corne, graine, and victualls of all sorts, all provisions of shipping, and all munition of warr, or of provisions for the same . . . [119]

At the same time, the Spanish included provisions, medicines and tobacco among prohibited goods,[120] thus crystalizing the concession which they made in the treaty of 1604 to England's insistence on treating provisions as contraband.[121]

The English proclamations were put into practice at once. A draft of instructions for English war vessels, in 1626, authorizes the bringing in of vessels "carrying forbidden goods or marchandise, or otherwise so assisting our enemies with arms, vitaille, or munition . . ." [121a] This instruction suggests that the use of the word "contraband" in the treaty of 1625 was not indicative of a fully established terminology. Sentences of the English Admiralty court in 1627 condemn

[119] *Loc. cit.*, p. 63 *et seq.* Twiss, *op. cit.*, p. 235, finds in these proclamations justification for the inference that the word "contraband" as used in the treaty of 1625 "was intended to denote articles of merchandise forbidden under the Proclamation of a belligerent Power to be carried to an enemy's ports. . . ." A similar proclamation was issued October 15, 1628 in regard to France: Rymer, *Foedera*, vol. XIX, p. 1.

[120] Nys, *op. cit.*, p. 226.

[121] Marsden (25 *Eng. Hist. Rev.*, pp. 243, 253; see also his *Law and Custom of the Sea, op. cit.*, p. 405) mentions an interesting case of the *St. Peter* of Havre. She was captured by the English, apparently for carrying goods to the Spanish Netherlands in defiance of the above proclamations. The practice of the French merchants at the time seems to have been, according to Marsden, to unload the goods at Calais and thence to send them over into the Spanish Netherlands; the idea of continuous voyage at once comes to mind. The decision of the case was complicated by the Council's interference with the Admiralty Court to which it issued conflicting orders to condemn and to restore.

[121a] Marsden, vol. I, pp. 416, 421.

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ELECTRONIC REPRODUCTION PROHIBITED

ships for carrying "forbidden and prohibited" (*vetitis et prohibitis*) goods.[122] There is an interesting statement by Sir Henry Marten in 1629 giving his reasons for condemning the French ship *Marie:*

> Captain West seized this ship on her passage to Oporto, in the territory of the King of Spain, and at the time of the capture there were on board her 300 small casks of tar, 3 casks of iron nails, 6 barrels of gunpowder, 5 packs of sailcloth, and 6500 anchor cables and ropes for ships. Therefore, since it is manifest that by every rule of law it is forbidden to carry to the enemy goods of this description, under penalty not only of forfeiture of the goods, but of far heavier penalties to be laid upon the persons of the carrier, no one, I conceive, can complain of the judge if, in accordance with the law and the ordinances of his King in that behalf, at the first hearing, when there was no appearance, and on the second, when the cause was carefully reconsidered, and the parties heard on both sides, he pronounced that the ship, caught in very act of committing the offence, had incurred forfeiture.

Marten was careful to add also that the French ambassador had concurred in the propriety of the condemnation.[123]

As a result of protests from Hanseatic and Danish merchants, England again, as in the days of Elizabeth, relaxed the severity of the proclamation against trade with Spain. An order in council of January 17, 1628 seems to have granted them entire immunity from the ban on trade, but a further order of April 16, 1630 suggests that this was not the case or that the concession was mitigated. The latter order provides that

> implements properly belonging to household, as fireshovells, tongs, candlesticks, snuffers, locks, basons, kittles, bucketts, knives, nailes, wier and such like shall not henceforward bee accompted for prohibited goods, but for lawfull merchandizes; only nailes proper for shipping, swords, and all weapons, metall for ordinaunce and what belong to the warre are prohibited and confiscable.[124]

A striking example of the English point of view at this period is found in the correspondence of Sir Thomas Edmunds

[122] Marsden, vol. I, pp. 448, 449 and 450. Marsden in one of the three cases translates the Latin into "contraband". In one sentence, the judges specifically refer to the king's proclamation as the source of the prohibition. Zouche is one of those signing the first of these sentences.

[123] Marsden, vol. I, pp. 452, 453.

[124] Marsden, vol. I, pp. 460-467. *Cf.* the same author in 25 *Eng. Hist. Rev.*, pp. 243, 257-8.

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ELECTRONIC REPRODUCTION PROHIBITED

and Lord Dorchester in 1629. The latter was negotiating an agreement with the French ambassador regarding trade with Spain. He wrote:

> True it is that the reglement he proposed for the future . . . excluding corn from contraband has occassioned a difficulty by reason of the law of nations, and continual practice in all places and times, particularly in his kingdom in reigns of former kings, and Queen Elizabeth's day which sustains the contrary.

After a further conference he wrote that the Frenchman still insisted on

> free transport of corn which hold not either with the law or practice of war which prohibits the transfer of munition de bouche as well as de guerre into an enemy country according whereunto H. M.'s proclamations are made and although there were no proclamations all civilians on that side maintained as ours do that to stop commeatum from going to an enemy is justifiable and usual with all nations even with the French themselves in time of war.

Ten months later, however, they were no nearer agreement, the French still insisting on free transport of corn and linen as well.[125] It is evident here that the line of thought follows the notion of a general practice which has become a rule of law. The disagreement on the subject of provisions as contraband is a long-standing one between these two countries, as was natural, since France was a corn-exporting country, sending grain to Spain, Portugal and even Italy.[126]

As indicated by the treaties of the period, the idea of contraband had taken definite form by the time of the outbreak of the Anglo-Dutch War in 1652. The state papers of the period, as well as the treaties, now use the word "contraband" as one having a definite and recognized meaning. The historical antecedents and forerunners of the law of contraband now become of less importance. Particularly notable is the attempt to define contraband in treaties rather than in belligerent proclamations in the course of a war. Nevertheless, dis-

[125] British Record Office, indexed as "Collection of extracts and copies relating to questions of international law" and marked "Paper Office, 1776", S. P. 9 (Misc.) 4. *Cf.* Atherley-Jones, *Commerce in War* (1907), p. 10.

[126] Clark, *The Seventeenth Century* (1929), p. 31. *Cf.* Twiss, *op. cit.*, p. 253, and *Recueil des Instructions Diplomatiques*, vol. 3, Portugal, p. 187.

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putes were by no means eliminated. In some cases they turned upon the inclusion of specific articles in the contraband lists, and at other times they challenged the entire doctrine of contraband.

While France was at war with Spain, on May 30, 1651 (N. S.), an order was issued by Louis XIV declaring that the Dutch trade with Spain would not be interfered with unless their ships carried men for the Spanish service or contraband "as powder, and all manner of arms and munitions, horses or equipage serving to the war, in which case the said ships with all their loading shall be of lawful prize." [127]

On December 5, 1652, after the outbreak of the war with England, the States General issued a public notice to their "Allies, Friends, and the Neutral Powers" warning them not to carry any "Warlike Stores, or other things serving to the Equipment of Ships" to any English port. Any such cargoes could be cleared from a Dutch port only under bond to twice the value thereof that they would not be carried to an English port. Neutral carriers were also warned to keep out in the "main sea", since they were liable to capture if found close to the English coast unless forced there by distress. Although other parts of the *Placaart* refer to "Provisions", it appears that this term refers to provisions for ships only and not to foodstuffs in general.[128]

This notice evoked a protest from the Swedish resident on June 12, 1653.[129] On behalf of his queen he felt bound to protest that by the prohibition on carrying contraband goods to England, Scotland and Ireland, "the free traffic and commerce at sea was not only invaded in general, but altogether

[127] 1 Thurloe, *State Papers* [hereinafter cited: Thurloe], p. 185.

[128] *A General Collection of Treatys . . .* [hereinafter cited: *Anon. Coll.*] (1732), vol. III, p. 60, and VI Dumont, II, p. 35. *Cf.* the resolution of the States General of April 26, 1653 authorizing the export from the Netherlands of contraband goods "and ship materials" except gunpowders, saltpeter, and brimstone, to allied and neutral countries, under certain restrictions: 1 Thurloe, p. 234. See also Navy Records Society, *The First Dutch War, 1652-54*, edited by Gardiner and Atkinson [hereinafter cited: *The First Dutch War*], vol. III (1906), p. 170.

[129] 1 Thurloe, pp. 264-5; see also *ibid.*, p. 271.

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ELECTRONIC REPRODUCTION PROHIBITED

disturbed and endangered, especially to the very great prejudice of the queen's Majesty of Sweden, and her good subjects." He asked that the prohibition be repealed immediately and expressed his assurance that he could obtain like action from the English government. He suggested that contraband goods were being carried to England from other countries, including even Holland itself,[130] thus establishing, he claimed, a discrimination against Sweden. He relied on the guarantee of free navigation and commerce in the treaty of 1640 but overlooked the provisions relating to contraband. The States General called these to his attention in their reply of September 1, 1653. They also remarked that to give the liberty desired by Sweden would be "altogether to the disservice" of the Netherlands, since it would reënforce and strengthen England in her "intolerable ambitious demands and ruinous designs" against not only the Netherlands but against "all Christendom." [131]

The Swedish resident replied with a further memorial of October 12, 1653, from which it appears that the Dutch were seizing as contraband the Swedish specialties of pitch, hemp and tar. In this connection the Swedish resident argued as follows:

> Their high and mighty lordships themselves do set down in the treaty of the sea affairs made with the king of Spain *anno* 1650, all manner of pitch, hemp, tar, and such like commodities out of the number of contraband, which if they be taken for such now, there would be hardly any commodities in her majesty's territories, which might not fall under the notion of contraband good, whereby the navigation and commerce of all her majesty's subjects would be utterly ruined
>
> What further concerneth that, which their high and mighty lordships alledge in the said answer, that the present government of England would be reinforced by such favour, as also animated not only to act against the United Provinces, but all Christendom; which if rightly considered, their high and mighty lordships themselves do not much apprehend, since out of these lands themselves by permission and knowledge of their lordships, these

[130] The United States made the same point in its protests to the British government in 1915: *American White Book*, II, pp. 73, 78. *Cf.* Consett and Daniel, *The Triumph of Unarmed Forces* (New York, 1923), pp. 295 *et seq.* An arrêt of the French Conseil d'Etat of January 27, 1657 is designed to prevent French vessels from carrying contraband to the enemy: Bib. Nat. Mss. Fr. 17329, p. 136. *Cf.* the royal edict of October 7, 1657, *ibid.*, p. 388.

[131] 1 Thurloe, pp. 436-437.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

merchandizes, which are called counterband, are daily exported in great quantities to neutral places, from whence they are afterwards easily transported for England, wherewith it is manifest that England is sufficiently provided, and is not like to want for the time to come. Neither likewise is it her majesty's intention hereby to give occasion of prolonging this war, for that will clearly appear by this, for at the beginning thereof she sent the lord Lagerfelt into England, as also myself here to propound her mediation between both. In which good intentions her majesty doth continue, as well by reason of the alliance, as also out of a singular inclination to the common, and especially this state's rest and peace.[132]

This correspondence is particularly interesting, from two angles: First, it shows that the idea of a ban on contraband was, at this period, still open to question. It was evidently considered to rest only upon treaty and in this case there was disagreement as to the interpretation of the treaty. Second, it shows that one neutral argued in favor of his right to carry contraband on the basis of similar trade by other persons, even through the medium of a sort of continuous voyage from the Netherlands to England via neutral territories. In other words, Sweden refused to be the only country whose trade was disturbed by a belligerent.

The States General were not induced to adopt the Swedish view when they were the aggrieved party, as is shown by the fact that in January 1654 they asked the Spanish government to restore only the non-contraband goods found in certain Dutch vessels captured by Spain.[133]

It may be noted that in 1657 (N. S.) France requested the Netherlands to stop their subjects from trading in contraband and the States General replied that this had been done.[134] The extent to which it had been done is indicated by the following communication from the Admiralty at Amsterdam to the States General on February 1, 1656 (N. S.):

High and Mighty Lords.

We have received your high and mighty lordships letter and inclosed resolution of the 26th of the last month, by the which your high and mighty lordships desire and request our advice upon the alteration proposed by the colleges of the admiralty residing in Zealand, in permitting the exportation

[132] 1 Thurloe, pp. 536-537.

[133] See 2 Thurloe, p. 417.

[134] 6 Thurloe, p. 465.

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of ammunition of war mentioned more at large in the said resolution; whereupon being debated by us, we could not omit to write back to your high and mighty lordships, that according as we are informed in the altering and drawing up of the list of the convoy in the year 1651, as the same is practised at present, many speculations happened about it among the then present commissioners from all the colleges of the admiralties, whether by reason of the peace, which we had at that time through God's mercy with all adjacent kingdoms and nations, the distinction in the exportation of wares and merchandizes, together with the name of counterband, as coming to cease with the cause, ought not to be removed; but there being considered the war between France and Spain, as also the divisions in England, Scotland, and Ireland, therefore the exportation of ammunition ought to be regulated, that so by too great a license, it might not give offence to the one or the other party. Besides that, it was also judged fit, that the government here should so manage it, that this state might not suffer any want thereof in case of necessity; and therefore it was ordered, with good reason, that the export thereof should be with their consent, which we do believe from that time hitherto to be given by all the other colleges of the admiralties, and by us with sufficient circumspection to all those that did desire it. Wherefore it is our advice, that the same order may be still observed. All which we do leave to your high and mighty lordships wisdom as you shall think fit.[135]

In the days of the Spanish Armada, Denmark had protested against Elizabeth's ban on pitch, tar, masts, sailyards and foodstuffs and had won some concessions from the English. Some seventy years later, when the Swedish wars were upsetting the Baltic trade, Denmark was driven to adopting rigorous rules against Swedish trade. King Frederick III's ordinance of September 23, 1659[136] is a clear illustration of the rather constant phenomenon of the divergence between contraband lists included in treaties negotiated in times of peace and those laid down by national edict during a war. Denmark was not, like the Netherlands, already bound by detailed conventional rules on this subject. This Danish contraband list—directed against Sweden—includes "oak ships' timber, and all sorts of ship's materials and apparel such as sail-cloth, tackling, cordage . . . All sorts of provisions for food and beverage, as well as all sorts of coarse and fine salt, without any distinction whatever, none excepted." Then follows a paragraph, interesting because it uses the contraband

[135] 4 Thurloe, p. 441.

[136] Robinson, *op. cit.*, p. 176.

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ELECTRONIC REPRODUCTION PROHIBITED

idea to justify condemnation of enemy goods. This is the more striking, because the evidence leads one to believe that the rule for condemning enemy goods was at this period less open to controversy than the rule against contraband.[137] The paragraph in question follows:

> The following goods shall also be reckoned as contraband, viz. calamine, cotton, and whatever else serves for the furtherance of all sorts of manufactures, made, woven, or otherwise put together in Sweden. . . . Also such articles as are cast, smith's work, or wire drawn, whether they be of copper, brass, iron, lead, or other materials, or what is made either of metal, linen, or wool, *wheresoever* they are met with, on board of free, or unfree ships, belonging to Swedish subjects. Under this description are to be understood, all sorts of ordnance and cannon, mortars of brass or iron, small or great, all sorts of arms, armour, arms for the use of cavalry or infantry, anchors and anchorstocks, nails, spikes, and bolts; also all sorts of ready-made house furniture and cooper's articles; together with copper and all other coins, being the property of Swedish subjects, and exported from the dominions of Sweden, although they should be found on board of ships belonging to free, or neutral places, and persons, as aforesaid; nevertheless that, on that account, free ships and goods belonging to neutral persons, shall not be subject to confiscation; if with such legal and proper certificates, as above described, they can judicially be proved to be such.[138]

There is also an enumeration of free articles "which are not properly and directly necessary and useful for any purpose of war"; these articles could be freely carried to and from Sweden by neutrals in neutral bottoms. The list is as follows:

> [Permitted to be exported from Sweden] . . . *iron in bars*, osmund (moonworth) [a root used instead of starch, to stiffen linen], refined copper (original Gaar-copper), brass wire, and copper in plates; further, all sorts of grain, and greasy articles (or fat-mongery); also, hides and skins, and all other Swedish goods, *being raw materials, or not made up or manufactured in Sweden* . . . —also, flax, hemp, wax, fir building timber, deals, laths, Gottland lime and lime-stones, all sorts of flags and other stones, together with masts, spars, tar, pitch, pot and wood ashes, clap-board, pipe-staves, peltry, and other Russia-leather, and Russian goods, . . . [permitted to be imported into Sweden] all sorts of silk articles, cloths, and such like fine shop ware, and current goods, which are not properly and directly necessary and useful for any purpose of war . . .

At this period, the prize courts were apparently quite

[137] See POLITICAL SCIENCE QUARTERLY, vol. XLVI, pp. 781 *et seq.*

[138] Robinson, *op. cit.*, p. 183, note, calls attention to the fact that in this ordinance goods "verbotene und contrebandewahren" include not only those shipped to Sweden, but those also which are exported from Sweden.

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ELECTRONIC REPRODUCTION PROHIBITED

familiar with the doctrine of contraband and there were many condemnations on that basis. Nevertheless, in a pleading of about 1649 before the French prize court, the claimant of a ship seized as prize argued that it was permitted to carry even munitions of war to the enemy.[139] The chief question was the allocation of particular commodities to this category. Zouche[140] describes an interesting case in the Spanish prize court in which an English (neutral) ship was captured with a cargo of tobacco for a Dutch (enemy) port. On behalf of the captors it was argued that

> the nicotine herb should be regarded as a food; at any rate by its use the consumption of food was protracted, and it ought to be confiscated on the same ground as salt, by which food is preserved from decay. On behalf of the English medical evidence was offered, by which it was established that tobacco smoke is not nutritious, and the opinions of jurists were cited who asserted that although it might be that the goods of subjects could be made liable to forfeiture by mere parity of reasoning, yet those of foreigners and friends were not liable to confiscation, unless declared contraband in express terms. The Spanish court gave judgment for the captors but the Englishmen secured letters of reprisal against the Spanish from their own king.[141]

In 1665, members of the Privy Council transmitted to the English admiralty judges their opinion concerning certain articles which they believed to be contraband.[142] The communication reads as follows:

> There having of late several applications been made unto us with complaint that you forbear the declaring any goods contraband, which are seised in ships trading with his Majesty's enemies the Dutch, to the very great prejudice of his Majesty's affairs, and the disappointment and discourage-

[139] Bib. Nat. Mss. fr. 18593, p. 323. See Mss. fr. 18592, p. 560 for brief in the case of the *Sainct Sauveur* of Hamburg, arguing that the ship should be released because there were no contraband goods on board. In another brief of about 1654, it is plaintively argued that the ship carried "très peu de contrebande"; *ibid.*, pp. 567, 569. On July 3, 1656 the Conseil d'Etat condemned as contraband part of a cargo consisting of "toiles noyalles, merdrigales propres à faire voiles, caisses de lames d'epées, poignards & clincaillerie"; *ibid.*, Mss. fr. 07329, p. 384, "Extrait des Registres du Conseil d'Etat."

[140] *Op. cit.*, p. 125.

[141] *Cf. supra*, p. 73 for Spanish instruction of 1625 including tobacco in the contraband list. *Quaere*, whether Zouche's case came up in the time of Elizabeth, see Westlake, *International Law* (2d ed., 1913), Part II, p. 278.

[142] Marsden, vol. II, p. 57.

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ELECTRONIC REPRODUCTION PROHIBITED

ment of such who have taken particular commissions, and have armed themselves in his Majesty's quarrel with his said enemies; And whereas, in perusal of his Majesty's declaration we find you fully authorized and required to proceed to the condemnation of contraband goods, which have ever been reputed and are certainly in their own nature these following commodities, as namely, canvas, masts, pitch, tarr, and other naval accomodations, as also wine, oil, brandy, fish, corn, salt, flesh, and all other things that tend as provision unto the support of life, as well as powder, guns, or other instruments of war; without an observance of which his Majesty will in vain attempt the reducing of his enemies, if they shall enjoy the freedom of such unlimited supplies; We therefore hope that your forbearance hitherto in this point has proceeded rather from the multiplicity of your business, then (sic) from any oversight of the true sense and intendment of the said declaration, wherein we find with ourselves no manner of scruple in the reason of it, or the conformity therein with the laws of nations, besides the clear meaning of the general words of the said declaration . . . [143]

It was apparently just prior to this remonstrance that rules had been drawn up for the Admiralty court.[144] On the subject of contraband, these rules provided for the condemnation of any ship carrying arms, powder, ammunition, or "provision of victualls, or anie contraband goods" to any Dutch port.

The judges apparently were not inclined to yield to the instructions of the Council, since some three weeks later there is an entry in the Privy Council Register ordering that the matter be further debated on June 7 with two of the judges in attendance, "the points in question being what goods are contraband how neighbor princes and potentates practices [*sic*] and how far may H. M. Jurie Gentum [*sic*] use his power." [145]

In another connection, Jenkins suggests the difficulties under which the judges labored. He refers, in a report about

[143] Both a proclamation and an order in council were issued on February 22, 1665; see Marsden, "Early Prize Jurisdiction and Prize Law in England. III", 26 *Eng. Hist. Rev.*, pp. 34, 44. For the fact that naval stores were declared contraband in 1664 and 1665, see also Pratt, *Law of Contraband of War* (1856), p. 192.

[144] Marsden, vol. II, p. 53. Marsden suggests that they were probably drawn up by Wiseman, Jenkins and others. The rules of May 22, 1672, were similar: Pratt, *op. cit.*, App. B, p. 251 *et seq.*

[145] Br. Rec. Off. P. C. Register (P. C. 2/57). A search of the records has failed to reveal further information on the subject; the entry for June 7 does not mention it.

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1667,[146] to the existence of a treaty with Portugal which seemed to "supersede the law", but, he adds, "I am taught that your M's foreign relations are not to be any part of our speculation in the C. of Admiralty but are to be interpreted by your M with your Most Hon. P. C."

An interesting indication that the desire to intercept contraband was double-edged, that is that the belligerent was interested not only in cutting off supplies from his enemy but also in getting them for himself, is found in a British order in council of 1667.[147] This order recites that goods such as masts, hemp, tar etc. are frequently brought in on prizes and sold to private purchasers, who resell them to the royal navy at a profit. It orders therefore that all such naval supplies so brought in shall be offered for sale first to the commissioners of the navy.

It will be recalled that in the treaty of peace concluded by England and the States General in 1667 at Breda,[148] foodstuffs were put on the free list. In 1673, Lauderdale wrote to the Scottish judges that "the treaty of Breda is certainly void by the warre, and that no ally can claime any benefit thereby when they carry provision of victuall or other contraband goods to the ports of enemies. . ." [149] In the treaty of 1674, however, the free list was made even more extensive than before.[150] In further relation to the treaty lists of contraband, it is interesting to note the view expressed by Jenkins in 1675: ". . . the taking and confiscating of contraband Goods, is either a Right of the Law of Nations, or else a Concession by Treaty, which your Majesty's Allies may challenge when they are in War, and find such Goods transported by your Majesty's Subjects. . ." [151]

The famous French marine ordinance of 1681 contains no

[146] Br. Rec. Off. S. P. 9/240; also Wynne, *The Life of Sir Leoline Jenkins* (London, 1724), vol. II, p. 732. *Cf.* Marsden, vol. II, p. 124.

[147] Marsden, vol. II, p. 69.

[148] Jessup and Deák, *loc. cit.*, p. 541.

[149] Marsden, vol. II, p. 84.

[150] Jessup and Deák, *loc. cit.*, p. 543.

[151] Wynne, *op. cit.*, vol. II, p. 781.

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surprises regarding contraband. Article XI reads: "*Les armes, poudres et boulets, et autres munitions de guerre, même les chevaux et équipages, qui seront transportés pour le service de nos ennemis, seront confisqués. . .*" [152] One notes that the list is restricted in accordance with the consistent French policy and that the word contraband is not used. A memorandum, prepared apparently for French official use about 1685, interpreting the ordinance of 1681 in regard to the rules governing enemy property, remarks in passing that as to contraband goods "*il y a presque en autant de differentes decisions que de traités et d'ordonnances.*" [153] This confusion is illustrated by a memorandum which appears to have been made by a French prize judge at Calais about the end of the century. The case involved a Danish ship, the *Lyon du Nord,* which was claimed by the Danish envoy. The cargo was composed of resin and tar bound for England, with whom France was at war; Denmark was neutral. The captor argued that tar was considered contraband in England and Denmark, and that tar on Danish vessels bound for France had been condemned at London. The Danish envoy denied this and claimed that a Dane had secured the release at London of a cargo of tar bound for Brest; he was unable, however, to produce the sentence of the court and the French judge was not satisfied by the offer of an affidavit from the Danish captain.[154] The captor then referred to the joint treaty between Holland, England and Denmark of 1691 in which tar is specifically included in the contraband list.[155] The Danish envoy was forced to admit the existence of this treaty but said it "*n'a jamais eu d'execution*", but of this he could offer no proof. The judge stated that he found an English decree of May 30, 1693 expressly stating that resin and tar were contraband.[156] The Danish envoy then attempted an appeal to

[152] Lebeau, *op. cit.*, vol. I, pp. 80, 85.

[153] Archives Nationales, Fonds de la Marine, G[5] 214, 2ème petit dos., p. 4.

[154] *Cf.* Jenkins' opinion of August 29, 1674, *infra*, pp. 87-88.

[155] Jessup and Deák, *loc. cit.*, p. 545.

[156] *Cf.* Marsden, vol. II, p. 148 for draft of an answer to a Danish protest dated May 21, 1693 regarding the capture of Danish ships. The French

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French pride, suggesting that there should be no slavish imitation of England, but the judge properly pointed out that if these goods were condemned in England, they must also be condemned in France, since otherwise Danes would carry them freely to England without interference by French cruisers but could not take them to France for fear of capture and condemnation by the English.[157]

The English reasons for seizing such products as tar during this war with France are clearly set out in a letter from the Earl of Nottingham, secretary of state, to William Duncombe, January 17, 1689/90. Holland and England had jointly declared a ban on all trade with France. Denmark joined them in a half-hearted way during the following year. Sweden, however, had announced her intention of protecting her trade by means of convoys. Nottingham wrote:

> The trade of Sweden to France is generally in such commoditys as are necessary to their fleet and for that reason, although we had made no treaty of prohibition, it cannot be expected that we should allow it while we are in warr with France at sea, nor can it fairly be asked in the treaty of commerce . . . that these materialls of shipping should be excepted out of the number of contraband goods, they being more prejudiciall to us than musketts or any other things that usually fall under that denomination.

He went on to comment on the fact that Sweden imported from France mainly wine and salt, and argued that they could get better from Portugal and Spain.[158] In the following June,

judge may have referred to the English instruction to privateers of May 2, 1693, which dealt in detail with the Danish treaty and contraband; see Marsden in 26 *Eng. Hist. Rev.*, pp. 34, 51-52, text in Marsden, vol. II, p. 414. Pitch, tar and other naval stores are listed as contraband in this instruction. These instructions originally included in the contraband list "corn . . . . whithersoever it be bound" but these words were deleted by royal order on June 14, 1693; *ibid.*, p. 418. See Clark, *The Dutch Alliance and the War Against French Trade, 1688-1697* (1923), pp. 116-118. Ships' timbers on Danish ships bound to France were apparently condemned as contraband in 1691 and 1693; see the cases of *The Arms of Copenhagen* and the *Unity* in Pratt, *op. cit.*, p. 45. In 1692, pitch and tar in a Swedish ship were condemned as prize by the High Court of Admiralty and the decision was affirmed by the Lords: *ibid.*, pp. 203-204.

[157] Archives Nationales, Fonds de la Marine, G[5] 214, Calais.

[158] *British Diplomatic Instructions, 1689-1789*, vol. I (Sweden), p. 8, and see also pp. 25-6; this collection was edited for the Royal Historical Society by James F. Chance and published at London in 1922.

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Nottingham made the same arguments in writing to Robert Molesworth, in Denmark. He stresses the

> miserable consequences that must attend all Europe, if France should be victorious in this warr; and nothing can more effectually prevent his success than want of trade, which impoverishes him, and particularly the trade of the north, which supplys him with the material without which he cannot carry on the warr . . . [159]

Juristic support for this very practical attitude is found in an opinion by Sir Robert Wiseman, king's advocate, who, on May 23, 1672, set down some propositions on prize law among which the following paragraph on contraband is of interest:

> By the law of nations, a ship carrying contraband goods forfeits itself only and the said good contraband; . . . Setting aside what are by treaties agreed to be contraband, which must be so esteemed, whatsoever they be, and no other, I also agree that iron, pitch, tar, hemp, *clypebard* [clapboard], planks, corn, excepting wainscott, wine, oyle, salt, will be accounted contraband, under which all such things which are of a general use of furnishing the war, and those that are in arms are properly comprehended.[160]

Wiseman included iron, but Sir Richard Lloyd would have disagreed with him, judging by his opinion of June 20, 1678.[161] He was apparently asked whether lead not made into bullets is contraband and he replied:

> I find it nowhere named as such in any of the modern treaties, and in the last treaties with Holland and France it is expressly numbered amongst such goods as are to be reputed free and not contraband. The reason of which, I humbly conceive is, because it is a species of merchandise and is proper for many other things besides bullets wherefore being it is not specified as contraband in the Treaty with Denmark nor is it immediately (without being made into bullets) necessary for the use of war as powder is though not named in the same treaty.

Lead was included in the contraband list in the Anglo-Dutch

[159] *Ibid.*, vol. III (Denmark), pp. 10, 11. See, in general, Clark, *op. cit.*, especially chap. v.

[160] The words "excepting wainscott" should obviously follow "planks". The above is printed by Pratt, *op. cit.*, App. B, p. 255, under the caption "Positions" without further indication regarding the nature of the document. He states, however, that most of the extracts in this Appendix are taken from a manuscript copied from the papers of Sir Nathaniel Lloyd, "a distinguished advocate at Doctors' Commons, who was appointed advocate-general in 1710, and held that office sixteen years." *Ibid.*, p. 249.

[161] Br. Rec. Off. S. P. 9/4.

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treaty of 1625. Sweden, in her treaty of 1667 with the Dutch and her treaty of 1672 with France, had secured in the free list the insertion of the phrase raw materials "*qui n'ont encore été travaillées.*" [162]

Jenkins' opinion of the same period is especially interesting. The question before him apparently was whether the king should intercede with the Spanish in behalf of a merchant of London whose goods had been seized by a Spanish privateer. The London merchant did a regular business in pitch and tar which he bought from a company in Stockholm. One consignment of these commodities was shipped on a Swedish vessel to a Frenchman at Rouen. En route to Rouen the ship was captured by a privateer with a Spanish commission and taken into Ostend. Proceedings were pending to condemn the pitch and tar as good prize, it being asserted that the governor of the Spanish Netherlands had declared these articles to be contraband. Jenkins wrote to the king from Doctors' Commons on August 29, 1674, as follows:

THERE is not any Pretence to make the Pitch and Tar belonging to your Majesty's Subjects to be contraband; these Commodities being not enumerated in the *24th* Article of the Treaty, made between your Majesty and the Crown of *Spain* in the Year 1667, are consequently declared not to be contraband in the Article next following. The single Objection that seems to lie against the Petitioner in this Case is, that this Tar and Pitch is found laden, not in an *English*, but a *Swedish* Bottom, as by the Proofs and Documents on Board it doth appear; and consequently that the Benefit of those Articles in the *Spanish* Treaty cannot be claimed here, since they are in Favour of our Trade in those Commodities, that shall be found laden in our own, and not in Foreign Bottoms.

BUT it is not probable that *Sweden* hath suffered or allowed, in any Treaty of theirs with *Spain*, that their own native Commodities, Pitch and Tar, should be reputed contraband. These Goods therefore, if they be not made unfree by being found in an unfree Bottom, cannot be judged by any other Law, but by the general Law of Nations; and then I am humbly of Opinion, that nothing ought to be judged contraband by that Law in this Case, but what is directly and immediately subservient to the Uses of War, except it be in the Case of beseiged Places, or of a general Notification made by *Spain* to all the World, that they will condemn all the Pitch and Tar they meet with.

So that upon the whole, your Majesty's gracious Intercession for, and Protection to the Petitioner in his claim, will be founded, not upon the

[162] Jessup and Deák, *loc. cit.*, pp. 541, note 54, and 542, note 61.

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Equity and true Meaning of your Majesty's Treaty with *Spain*, but upon the general Law and Practice of all Nations. All which is humbly submitted, *etc.*[163]

Jenkins thus recognizes that contraband can be determined in three ways: by treaty, by the general law of nations, or by belligerent proclamation. He is not quite clear in his reference to the general law of nations, but the implication seems to be that by this criterion, pitch and tar are not contraband. If that is his conclusion, then he admits that they do not fall within the class of goods "directly and immediately subservient to the Uses of War." In other words, he shares the viewpoint of Sir Richard Lloyd, who held lead to be non-contraband, rather than the view of Sir Robert Wiseman, who had expressly held pitch and tar to be contraband "by the law of nations". If, however, as Jenkins recognizes, a belligerent can make goods contraband by declaring them to be such through public proclamation, it would make little practical difference what "the law of nations" had to say on the subject. It is worthy of note, however, that all three of these English opinions, as well as the opinion of the French judge, discussed above,[164] lay great emphasis on the treaties and turn to them as the primary and most authentic source for determining whether a particular article was or was not contraband.

Conclusions

It is freely admitted that the above survey presents merely a scattered group of incidents and no complete statement of the various phases of the subject under discussion.[165] On such a record it is obviously dangerous to generalize, but the writers will not be deterred by an angelic fear to tread.

[163] Wynne, *op. cit.*, vol. II, p. 751.

[164] *Supra*, p. 84.

[165] Even fragmentary studies in this field must convince the student that here is much work for the historian first and then for the international lawyer. There are vast sources untapped by the present writers. The investigations which have been made indicate that many international lawyers (with some notable exceptions like Westlake, Nys, Twiss, Wheaton and others) have paid far too little attention to historical research and that the historians have sometimes been misled by incomplete knowledge of international law in its modern aspects. This study is illustrative of the difficulties but does not pretend to afford any example of their solution.

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If there be one principle that stands out from the above study it is that logic is not the key to the rules regulating the conflicting claims of neutrals and belligerents at sea. Logic, cannon, learned theories and bribery have all been used to sustain and to demolish legal positions taken from time to time. It surely may be said that by 1700 there was no *consensus omnium* on the details of the law of contraband. One may say that there was general recognition of the fact that a belligerent had a right to intercept and to confiscate munitions going to the enemy, but even this limited right was occasionally challenged. There seems also to have been general recognition that a belligerent did not have a right to cut off all neutral trade with the enemy, although belligerents attempted by proclamation to do so time and again. In a broad way it may be asserted that belligerents began by enunciating total prohibitions, were met by neutral protests, and ended by enforcing as much of a ban as their power or the supineness of the neutral states made practically advantageous.

There seems to be little fundamental difference between the last decade of the sixteenth and the second decade of the twentieth century except that in the latter case the precedents had so multiplied that both neutral and belligerent were able to adduce more precedents and more authorities. The law of neutral rights did not in either period satisfy the neutral or the belligerent. How can it ever fail to be true that the belligerent will wish to cut off *all* his enemy's commerce and that the neutral will wish to continue *all* his trade even with the parties at war? From at least the sixteenth century the history of international law has been a constant struggle to compromise, not on principle but on practical concessions.

An anonymous writer in 1779 stated the case very neatly when he was discussing the treaty of 1667 between England and Spain. He explains that the treaty contemplates freedom of trade except it be "to screen the Effects of the Enemy" or to carry contraband.

'Tis true [he continues] this Liberty is no more than what is allowed by the Principles of natural Equity or the Law of Nations, and consequently, at first Sight, may seem not to require a particular Stipulation. But History

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will inform us, that amid the Irregularities of War, the Rules of Equity in this Respect were not always enough regarded, and that many Governments, in Time of War, did often most licentiously disturb, and sometimes prohibit totally, the Commerce of neutral Nations with their Enemies. Hence it became necessary to fix and determine what was the general Law of Nations, by particular Treaties; and hence it is, that about the middle of the last Century, when the commercial Regulations which now subsist between the *European* Powers first began to be formed, we find Articles to the same Purpose as those abovementioned, in our Treaty with *Spain*, asserting in general a Right to trade unmolested with the Enemies of each other.[166]

The reliance and insistence upon treaties is evidence of the debility of the customary law during the sixteenth and seventeenth centuries. Yet the customary law had its champions and there was strong insistence upon it, too, when no treaty provision was applicable.

Treaties might be violated, but on the whole they were a fairly adequate basis for securing compensation for ships or cargoes seized in violation of their terms. Prize courts frequently released vessels on the basis of the treaties[167] and governments frequently released others before or during prize proceedings in response to neutral complaints. Nor was the useful device of preëmption unknown.

In regard to goods other than munitions of war, *stricto sensu,* there was constant disagreement and dispute which continues down to the present day. England constantly sought to secure from other states agreements recognizing her right to ban foodstuffs and materials for supplying and building ships. The modern notion of goods conditionally contraband had not yet taken root, despite its suggestion by Grotius in 1625. At times England secured such agreements; at times she yielded to the opposite point of view—most consistently

[166] *A Complete Collection of all the Marine Treaties* . . . . (London, 1779), p. xx.

[167] There is not enough evidence available for a precise statement, but it seems that a large number of ships brought in as prize in the seventeenth century were released by prize courts; this may have been due to the fact that many of the captures were made by privateers who had little sense of responsibility for neutral rights or their own government's difficulties with neutral governments. Records of a French prize court in 1695 show 24 vessels condemned, 16 ransomed and 12 released. Archives Nationales, Fonds de la Marine, G^5 221 IVGEM—DV—CON—DES PRISES QVART—D'AVRIL 1695, TOM. 1.

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maintained by the French—and agreed to put such goods on the free list. A survey of the treaties of the seventeenth century shows how each state varied from one position to another as political exigencies or economic conditions required, but how each constantly sought to protect its own produce and industries when possible.

England especially wished to put on the contraband lists in treaties all provisions and materials for equipping and building ships.[168] As to the latter category, she was successful to the following extent: In the Danish treaty of 1691, tar is included as contraband; with Sweden, in 1656 and 1661, ships of war are included; with the Netherlands, the treaty of 1625 put ships, sails, cordage, copper, iron and lead on the contraband list, but the treaty of 1654 included in this category only ships and in 1692 only tar. On the other hand, the free list in the treaty with France of 1677 includes all naval supplies and the treaty of 1674 with the Netherlands puts ropes, sails, anchors, masts, planks, boards and beams on the free list. As to naval supplies, therefore, it may be said that England made little progress with her treaties prior to 1700. In only four cases did she succeed in getting provisions on the contraband list—with Spain in 1604 (*quaere* whether this should really be considered "contraband"), with the Netherlands in 1625 and 1674, and with Sweden in 1661. England yielded agreement on including provisions in the free list in 1667 and 1674 with the Netherlands, in 1677 with France and in 1667 with Spain. As to provisions or "*munitions de bouche*", therefore, England was equally unsuccessful in winning the other powers to her point of view. It is not unlikely that the expansion of the free lists in the latter part of the century was induced by the same policy which inspired the Navigation Acts, namely the desire to build up the English carrying trade, an effort which was largely successful and at the expense of the Dutch.

France was an exporter of wines, salt, provisions, cloth, etc. and a large importer of ship-building materials. Except for the treaty of 1655 with the Hanseatic Towns which declared rope and sail-cloth contraband, she made no treaty in the seven-

[168] See the reasons given *supra*, pp. 64 and 85.

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teenth century by which she agreed to consider as contraband anything but what might properly be called munitions of war. On the other hand she secured for her special interests an extensive free list in the treaty of 1677 with England, and specific exemption of provisions in treaties of 1655 with England, of the same year with the Hanseatic Towns, of 1662, 1678 and 1697 with the Netherlands, of 1659 with Spain and of 1672 with Sweden. The last treaty, in the interest of Sweden, also included raw materials such as steel, iron, copper and pitch.

The Netherlands, as a great carrier nation, particularly of French produce, until the last two or three decades of the seventeenth century, stood generally for extensive free lists. On occasion, alliance with England or other considerations induced her to agree to putting certain articles on the contraband list.[169] Tar was so included in her treaty with Denmark of 1691; provisions, naval supplies and metals, in her treaty of alliance with England against Spain made in 1625; ships, money and provisions, again in a treaty with England in 1654;[170] tar, in the English treaty of 1691; ships and money, in the treaty of 1640 with Sweden.

Spain made no treaty between 1625 and 1700 in which she agreed to consider as contraband anything but munitions of war. This was natural in view of her dependence upon imports for provisions and naval supplies etc. With the Netherlands in 1650, with France in 1659, and with England in 1667 she agreed that provisions should be free.

Without further summary[171] it should be clear that during

[169] Twiss, *op. cit.*, pp. 251 *et seq.*, suggests that the Dutch attitude changed in favor of neutral trade about the middle of the century and partly as a result of the influence of the Grand Pensionary De Witt, who expressed the opinion in 1654 that the Law of Nations did not forbid neutrals to furnish corn to belligerents. See also Satow, *The Silesian Loan and Frederick the Great*, p. 126, note 1.

[170] This was a compromise between a more extensive contraband list urged by the English and a more extensive free list urged by the Dutch during the negotiations; see Jessup and Deák, *loc. cit.*, p. 538.

[171] Atherley-Jones, *op. cit.*, p. 54, has a fairly complete table of treaties classifying contraband and free lists in regard to the categories, money, ships, naval stores, provisions and troops.

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the seventeenth century there was general reluctance to accept the English view which favored the extension of contraband lists. There was certainly no general agreement that provisions and naval supplies were contraband of war, and even England had to yield on these points occasionally. This lack of agreement did not turn upon the argument whether or not these supplies were useful to the enemy; in most cases they obviously were; if they were not, no one would have been so eager to prevent neutrals carrying them to an enemy. Of course the treaties did not always control, and the idea persisted that a belligerent could make his own contraband list by proclamation during the war. Juristic opinion seems generally to have been against considering these goods contraband by "law of nations".

Such, then was the situation of the law of contraband of war, at the close of a century which witnessed the first great period of development of modern international law.*

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* This article will be concluded in an early issue of the POLITICAL SCIENCE QUARTERLY.—ED.

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A FRAGMENT ON SOVEREIGNTY

IT requires considerable courage, or presumption, as some might prefer to style it, to ask a reader's attention once more to so well-worn a topic as sovereignty. Few political conceptions have been the subject of so much discussion amongst us in the last hundred years. But this very fact is proof of its vital importance in our modern world; and the wide variety of the views held concerning its essence, as well as the conflicting conclusions to which these views still lead, may furnish sufficient excuse for another attempt to clarify some of our ideas touching this central formula under which we try to rationalize the complicated facts of our modern political life.

If sovereignty were an idea purely abstract we should be closer than we are to unanimity as to its character; but it is traditional as well as abstract, and no attempt to analyze it can have hope of success which ignores the stages and factors in its growth.

Sovereignty is no essential part of the abstract conception of a state, but to every modern man but the anarchist some kind of supremacy is essential, if his concept is to be consistent with itself; though the idea of this supremacy may at some periods of its growth have been so blurred and indistinct as to be almost undiscoverable, as during the long sway of the feudal theory of *dominion* in the middle ages.

Sovereignty, in fact, is a supremacy conceived in a particular way and in particular terms; but supremacy itself is a broader concept, and it may be conceived and in certain periods has been conceived in ways and in terms which are quite different. The Greeks, for example, had a very definite idea of supremacy, but for reasons which will presently appear, it would seem better to distinguish it clearly from modern sovereignty.

Supremacy is central in the political thought of Aristotle, but it is a supremacy held in a state by a ruling class not in

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terms of that state's constitution as in the case of a modern sovereign: Aristotle's ruling class exercises this supremacy simply by virtue of the fact that it is able actually to maintain it and only so long as it has the power to do so. Supremacy is a control enjoyed in fact, not a lawful authority defined as the "sovereign's" is, by a constitution. The constitution is dictated to the state by the class in power, it is not imposed by the state upon the rulers; while a modern "sovereign", on the other hand, is constituted and defined by the constitution itself. For the Greeks, the ruling class makes the constitution; for the modern, the constitution makes the "sovereign". The Greeks were thinking of law in terms of the state; we habitually think of the state in terms of law. No word was oftener on Artistotle's lips than the word "constitution", but he meant by it the whole complex of aims, ethical, social and economic, as well as legal, toward which the common life of the citizens was guided under the dictation and direction of the rulers or class in power; we think of a constitution merely as the sum of the provisions under which the ruler is set up and his lawful authority defined, limited and regulated. For Aristotle the constitution of a state is the ideal of social and political life which its ruling class prefers and actually imposes upon the whole body of citizens because it is physically able to enforce its will over them. The ruling class, he says, determines the constitution, and the constitution *is* the state. But compare for a moment such an assertion with any modern definition of a constitution and the vast difference between them will be apparent at once. Professor Dicey, for example, in his *Law of the Constitution,* distinguishes a constitutional law from another by restricting it to those rules which are concerned with the definition or the distribution of the sovereign power in a state.

How and when did this fundamental difference arise between antique and modern thought, and what are the new elements in our modern conception of the political relation which result from this difference?

It was in the Hellenistic period apparently that "supremacy" began to take on the distinctive characteristics which mark

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our modern concept of sovereignty. The Stoics saw in the world of human relations a law coeval and coextensive with man himself; a law, therefore, which no state can make, nor any ruling class within a state: that law was in existence before there were any states; and no state, in the only proper sense of the term, can ever even come into being if it does not incorporate this eternal law in its framework. The state has become a *vinculum juris;* consent to a preëxistent law (*juris consensus*) is the origin and the badge of a true commonwealth; the state does not make law, law makes the state. "Modern" political thought has in fact begun, in the habit of thinking of the state in terms of law, not of law in terms of the state; and the legalistic approach, which has been the chief theoretical characteristic of politics from Roman times to our own, is already clearly apparent.

That these newer habits of thought persisted throughout the whole period of the Roman Republic and Empire is a fact which needs no proof, and in Rome we have the first actual "sovereign". We should probably have had at the same time a definite theory of sovereignty to account for this fact if the jurists of the Empire had possessed a capacity for political speculation commensurate even in slight degree with their genius in formulating the specific rules of law. But, unlike the Greeks, they show few signs of such capacity, and a clear-cut conception of political supremacy in terms of law had therefore to wait for its next great opportunity, an opportunity which, however, was not to come to the western world again for a thousand years, when actual political relations in the nation-states of western Europe had once again assumed somewhat the same form at the end of the middle ages which had characterized the Roman state under the *imperium* of the emperors.

In the long interval of the middle ages which lies between, conditions were unfavorable for the formulation of any theory of sovereignty, largely because there was scarcely discernible among strictly political institutions a supremacy of any kind. In the earlier centuries of this period government, usually in the form of monarchy, was taken for granted and the medieval

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mind was not yet mature enough to take the step from tacit acceptance to self-conscious analysis of political relations. In the eleventh century political speculation was reborn in defense or denial of papal claims to a political authority over the whole of the *Respublica Christiana,* and an authority which was fast developing into a true *plenitudo potestatis;* but in the lower sphere of secular political relations specifically, the chief new doctrine stimulated by these ecclesiastical controversies was the theory of dominion, which reflected more of the decentralization of feudalism than of the strong monarchy of the canonists.

From the thirteenth century to the sixteenth *dominium* is the prevailing formula under which men habitually think about secular government. But in essence this *dominium* is a theory of superiority rather than supremacy. For Beaumanoir, writing in the thirteenth century, the king is "sovereign" in his kingdom, but so is an earl in his earldom, and even a baron in his barony. If the king's authority is greater than the earl's or the baron's, this is primarily because it is wider than theirs, not so much because it is higher in kind. The king alone has the care (*garde*) of the whole kingdom and must have an authority commensurate with his broader responsibilities. It is true, as Luchaire has remarked, that in this whole period the conception of true kingship was never lost entirely, but it was without doubt obscured greatly by conceptions of the political relation drawn from actual conditions under feudal tenure with its graduated rights and interests enjoyed by a hierarchy of lords in the same fief and over the same tenants. In the feudal monarchy every king was *dominus* as well as *rex,* and as *dominus* his rights were scarcely distinguishable in kind from those of inferior lords.

In such circumstances the development of a clear-cut theory of any single supreme political authority over all subjects is not to be looked for. *Dominium,* as a theory of government drawn in largest part from a rationalization of the feudal relation, was destined to stand in the way of any true theory of sovereignty as long as the feudal institutions which gave life to the formula retained their own vitality. It remained

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until modern times a barrier to sovereignty, because it was inconsistent with a complete supremacy of any sort.

At times it has been said that the chief reason for the lateness of the appearance of a theory of sovereignty was not this dominion, but rather the prevalence in the middle ages of the conception of natural law, but such an explanation entails a misinterpretation of the history of the theory and implies some misunderstanding of the original notion of sovereignty itself. The earliest forms of the theory, as everyone knows, freely incorporated natural law in it, and they were entirely consistent in so doing; for sovereignty is a supreme authority not deducible from might, according to this theory, but defined by law; and if so, there is nothing to prevent the inclusion in this law of provisions which men believe to be dictated by nature, as well as those arising from custom or created by enactment. The theoretical obstacle to sovereignty was not the law of nature, except in so far as it contributed to retard men's awareness of the fact of law-making. In reality the main obstacle was twofold: the prevalence in the middle ages of the theory of dominion and the absence of any clear notion of legislation. What characterizes a modern "sovereign" is supreme authority to make law, but in medieval Europe it was not easy to find any authority supreme in all respects, and even if found, it was an authority merely to promulgate, administer and interpret a law already in being, not to make a new one. The legal rules issued in a king's name might be *stabilimenta, établissements* or *statuta* — something "established", as such terms imply; but these are not the creations of a ruler legally competent to enact legislation at will.

By the sixteenth century, however, these medieval conditions had largely been replaced in some parts of western Europe by the ones we are familiar with today, and before the end of that century a few keener minds had begun to discard older formulæ explanatory of phenomena already outworn and to reshape the theory of the state in light not merely of traditional doctrines but of newer political conditions which they were beginning to discover in existence about them. In the more centralized states the king had at length outgrown the feudal

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stage and had become the true head of a nation, once more a monarch ruling over subjects instead of a lord over vassals; and ruling in accordance with a law which was truly national in scope and character. Moreover, such substantial additions and changes were now being made in the law itself, and with such frequency, that it was scarcely possible longer to conceal this fact under the older medieval doctrine that a monarch can only administer or interpret a law but not make it. The world was ripe for a new theory of the state. It finally came in the recognition that a state consists essentially in a supreme legislative authority over subjects.

Apparently the first definite and comprehensive statement of the new doctrine was by Jean Bodin. In his *Methodus ad Facilem Historiarum Cognitionem,* first published in 1566, he asserted the principle that an authority truly supreme is essential to every state and when present constitutes a state, though he still retained the medieval doctrine that the chief and the typical form of this supreme authority is the judicial—control over the administration and interpretation of law. But ten years later, in his more famous *République,* he has begun to see that it is supremacy in the making of law rather than its administration which marks the sovereign. In that epoch-making book he defines a republic as *un droit gouvernement de plusieurs mesnages, & de ce qui leur est commun,* AVEC PUISSANCE SOUVERAINE; and *puissance souveraine,* or sovereignty, as *la puissance absoluë & perpetuelle d'une République,* or, as in his Latin version of 1586, *suprema in cives ac subditos legibusque soluta potestas;* a power or authority of which the first and foremost element (*primum ac praecipuum caput*), to which all others are incidental, is *la puissance de donner loy à tous en general, & à chacun en particulier.* In these few statements the whole of the theory of modern sovereignty is expressed in its classical form. Bodin is no doubt entitled to his claim to be the first among philosophers and jurisconsults to formulate this theory, and Sir F. Pollock is probably justified in saying that this formulation could not have come much earlier than it did.

For an understanding of the later history of the theory a

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careful consideration of every important part of Bodin's statement of it is, of course, necessary; but in this paper attention will be confined practically to one part alone, and the first: *République est un* DROIT *gouvernement.* It is a government defined by law, and though the sovereign authority in it is *legibus soluta,* is "free of the laws", yet these laws can never include the fundamental rules upon which the state itself rests and by which the sovereign is constituted and his authority defined, whether these fundamental rules be thought to be drawn from the law of God or from the law of nature, or come actually from the ancient custom of the nation or from a distinct and definite expression of the nation's will. If we assume that sovereignty is not might but authority, then a definition of such authority is an absolute necessity, and the terms of that definition will fix a limit beyond which the holder of the sovereignty can never pass without negating his very existence. Bodin did so assume, and was compelled by the logic of that assumption to place beyond the sovereign's control all the essential principles which form and enter into *un droit gouvernement,* though as sovereign he is free of all laws whatsoever made or to be made in accordance with these principles.

In Bodin's day it was generally accepted that a government could never be "*droit*" if it violated the principles of justice founded upon the law of nature and the law of God. Every association of men is held together by some bond of law, but if such an association is to be better than a band of robbers this must be a law based on justice, and justice comes from the nature of man himself and from the mind of God. So there never could be a true republic except one founded in justice, nor any legitimate authority within such a republic.

But the *jus civile,* public as well as private, within a particular state will consist, as Gaius said, partly of laws common to all mankind and partly of laws peculiar to that state alone. And if the fundamentals of the common law of mankind must always be incorporated in the definition of any true commonwealth which man makes, so in a particular commonwealth this definition may in addition include some

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peculiar principles not necessarily present in every state, but fundamental in that particular one, and an integral part of the very definition of the state itself, of its government, and of the supreme authority therein. Such particular principles Bodin saw in France in the so-called Salic Law, and in the inalienability of the royal domain and authority. These principles did not have their source in man's nature or in God's law, but they were no less essential than such to the integrity of the French kingdom and in France were therefore "fundamental" in the same sense. When, then, Bodin declares that his sovereign is "free of the laws", he restricts such laws to the ordinary rules enacted in the state pursuant to these fundamental principles and never inconsistent with them. By these fundamental principles even the highest authority is always bound; it is only of all others that he is wholly free. It has been the fashion of most modern interpreters of Bodin in England and America to condemn this reservation of fundamental law as a fatal inconsistency in his theory and a sign of failure fully to grasp the essential principle of sovereignty. In reality this condemnation is proof of their own inability to understand his true meaning, resulting usually from imperfect knowledge of the historical basis, ancient and medieval, upon which Bodin's theory actually rests.

The fundamental law of a state as Bodin conceived it must therefore embody the laws of nature and of God and may also include particular rules which are no less an integral part of that state's "constitution". For him, as was natural at the time, all such particular rules actually come from immemorial custom. But there is no logical necessity for restricting them in this way, and therefore in after times, as men became more self-conscious politically and as law-making more and more tended to replace mere law-declaring, these particular "fundamental" rules were extended to comprise new provisions as well as ancient customs, and thus the foundations of the modern "written constitution" were finally laid. The bedrock upon which all such modern written constitutions rest—all at least which originate in the people—and the only one upon which they may rest consistently, is this distinction, in

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essence identical with Bodin's, between those laws which a government makes and may therefore change, and the ones which make the government itself. It is immaterial whether the latter rules be drawn from the law of nature or immemorial custom as in Bodin's day, or be made by definite act of the people's will, as they usually are now; in any case they must inevitably be superior to the government they create and beyond the reach even of the sovereign organ within it whose authority they define. This is a theory of law not of might, the theory of the *Rechtsstaat;* and it is this theory which has dominated Continental thought to the present day, and for two generations after Bodin dominated even English thought, the theory of Hooker, Eliot, Twysden, Philip Hunton and Sir Matthew Hale.

It remains briefly to consider the changes which in England ultimately replaced this theory by a newer one, and to compare this new theory with the old on the basis of their respective merits theoretical and practical.

It was Thomas Hobbes, the keenest and shortest-sighted of modern political philosophers, who put this newer theory in clean-cut terms as Bodin had put the older. In the struggle which became concrete in England in the summer of 1642 with the issuance of the militia ordinance, behind all the ponderous arguments from ancient precedent employed on either side, Hobbes saw clearly the true nature of the issue and its inevitable outcome, and he saw them earlier and more distinctly than most of his contemporaries, and set them forth in his *Behemoth,* or history of the civil wars. Though it was the ancient constitution which both parties were still professing to defend, the struggle between king and parliament was at bottom a struggle not for law but for mastery, and it could end only in the actual mastery of one or the other. In his more theoretical works, especially the *De Cive* and later in the more celebrated *Leviathan,* Hobbes reduced his observations of these actual conditions in England to a formula purporting to have universal application. The supreme authority in any state is the one which can compel actual obedience. Might, not law, makes right. It is authority, and

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not reason, which makes a law, as he tells us in his *Dialogue of the Common Laws of England,* written to refute the traditional doctrines of Sir Edward Coke.

Like Aristotle's supremacy in Athens of the fifth century B. C., and Bodin's sovereignty in France of the sixteenth A. D., this is a rationalization of actual political conditions; in this case, conditions as they existed in England in the period of political strife and civil war between 1640 and 1660. The core of such a rationalization is naturally actual might, not legitimate authority. But the disturbed conditions of civil war furnish poor material for a general theory of settled government. It is the unlaw of the English civil wars and Interregnum to which we are indebted for that particular type of supremacy, the sovereignty of Hobbes and Filmer and John Austin, which still prevails in the political thought of England, and, strange to say, of America as well; although it was rejected by James Otis, Samuel Adams and other Americans in the eighteenth century, and notwithstanding the fact that it is utterly incompatible with the fundamental conceptions upon which our American governments were originally established and indeed with all written constitutions and bills of rights wherever and whenever they are found, those few alone excepted which proceed from the concession of a ruler.

Nothing could show more plainly the nakedness of the might which lies at the center of Austin's theory than his well-known reformulation of Hobbes's sovereignty in *The Province of Jurisprudence Determined.* He tells us there that when in any society a determinate person (or persons) "*habitually*" receives the obedience of "the bulk" of the members of the society, such person (or persons) must be considered to be the sovereign in that society. There is no question here of law or right. It is the mere physical fact of mastery, the actual existence and continuance of obedience whether induced by consent, fear or force, which clothes those who obtain it, no matter how or why they obtain it, with the supreme authority in a state. And furthermore, the actual submission of "the bulk" of the people is, in this theory, complete justification for a supremacy with unlimited power over all, even over those

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who have never consented to it. Minorities look in vain for protection under such a theory, and there is no right of an individual too sacred to be overridden with the assent of "the bulk" of the people.

If anyone should doubt the practical effects of this truly slavish theory of the state, a very slight review of certain periods of English and American history would be enough to undeceive him. It was largely by an appeal to it that Lord Mansfield defended and obtained the passage in 1766 of the Declaratory Act which affirmed that Englishmen in America were completely subject to the power of a legislative body in which they had no representatives whatever, a perfect example of Austinianism in operation; it was its influence which enabled conservatives like Lord Eldon to justify and secure the retention, even in the nineteenth century and by an unreformed parliament, of such notorious abuses as Catholic disabilities and the Test and Corporation acts, and to enact class legislation of the type of the Combination acts.

It is little wonder that such a theory should in time provoke reaction among liberal minds and meet with the opposition it deserved. The most interesting and important theoretical aspect of this opposition at the present time is the recent growth and rapid extension of the theory usually known as "pluralism".

The underlying principle of pluralism is simple in the extreme. Under it, as its name implies, it is not necessary that there be in the state any supreme authority at all. There may be one person, or institution, association, or body such as a church or guild or trade union, to whose authority a citizen defers if he chooses, or there may be more than one; and if more, the citizen himself freely determines which shall receive his obedience should their claims conflict. In effect, there is and can be no "sovereign", because sovereignty itself is a wholly inadmissible concept.

It is, however, far more than sovereignty that pluralism repudiates; it denies the existence or the right to exist of a supremacy of any kind whatsoever. There is no "sovereignty" in the state because there can be no supremacy. But such a

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rejection of supremacy is equivalent to a repudiation of all control over the individual citizen except that which he voluntarily imposes upon himself, a flat denial of the legitimacy of any coercive power whatever; and it is more than questionable whether anyone but a professed anarchist could make such denial without incurring the just charge of inconsistency and confusion of thought. For adherents of the theory of philosophic anarchy pluralism is an eligible explanation of political relations. How it could possibly form an integral part of any other theory of the state, it is rather difficult to see, or how anyone holding any other theory could consistently espouse it. Yet many have espoused it who are apparently unwilling to subscribe to the anarchistic creed. For most persons pluralism will contain too little and too much: too little in its assumption that all sovereignty must of necessity be Austinian sovereignty, too much in the denial that sovereignty of any kind, or supremacy even, can ever be a legitimate political concept. Political ideals are one thing; actual political phenomena often quite another. Pluralism unquestionably fits in perfectly with the high ideal of the anarchist, but he would probably be the first to admit that it accounts for no actual government existent now or hitherto.

Few countries have made more significant contribution to the modern world's stock of political institutions than the United States, but to the theory underlying them all, our contribution is negligible. Our theory, such as it is, has been mainly a theory of lawyers who were usually content to accept their explanation of government at secondhand from later English legal sources such as the *Commentaries* of Sir William Blackstone, himself a political theorist far from profound or consistent, as Jeremy Bentham had little trouble in showing. Modern federalism, for example, has been largely our work, but no thoroughgoing theory of it ever appeared till after the foundation of the new German Empire in 1871.

In short, we have hitherto been satisfied to borrow and to retain, with little discrimination and no adequate examination, a traditional theory inconsistent with our national origin, outworn when we took it and tenfold more outworn now; a

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theory originally built upon actual conditions of civil strife instead of national well-being, and itself unfailingly productive of new strife, except when fiction or fact has stood in the way of its full operation. The time seems ripe again for a new theoretical appraisal of our political institutions which will take complete account of present-day conditions and needs. If a satisfactory theory should ever be the outcome, such a theory would, of course, have to meet and furnish explanation of actual political conditions which are vastly more intricate and perplexing than those of the simple unitary national monarchy of France which gave Bodin the principal data for his rationalization in the sixteenth century. Even if we should start with Bodin, we could certainly not end with him. But it is none the less true that no theory which proves to be unsound for a simple state can ever form the basis for a valid explanation of a complex one; the essentials must be the same in both.

It is the purpose of this brief fragment merely to give a few illustrations of the importance, for a proper testing of these essentials, of a careful review of the past development and practical results of some of the theories of government which we still employ. Such review as the writer himself has been able to make has seemed to him to show that the *Rechtsstaat* of which Jean Bodin gave us the first analysis, is after all probably a sounder foundation on which to build than either the assertions of Hobbes or the negations of the modern Pluralists. From such a survey others may and some no doubt will be led to a different conclusion, but few are likely to dissent from the general principle that in any serious attempt to reach an adequate synthesis of present-day political relations, or a sound analysis, past experience cannot safely be ignored.

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REVIEWS

The Cabinet Council of England in the Seventeenth and Eighteenth Centuries, 1622-1784. By EDWARD RAYMOND TURNER. Baltimore, The Johns Hopkins Press. Vol. I, 1930, xiii, 469 pp.; Vol. II, edited by Gaudence Megaro, 1932, xix, 480 pp. $7.50 each.

The first volume of this work was in press when Professor Turner died, in December 1929, and was published soon afterwards. When the second volume, which he left in typescript, was in page proof, Dr. Gaudence Megaro, one of his former pupils, gave it some editorial revision and prepared a descriptive and critical, and exceedingly valuable, bibliography, which includes the titles and designations of all the important original materials, published and unpublished, for the study of the English cabinet in its origin and its development in the seventeenth and eighteenth centuries. Mr. Turner's interest in the cabinet as a field of historical research began while he was a graduate student at Johns Hopkins more than twenty years ago, and his articles in the American and English Historical Reviews, published between 1913 and 1923, were perhaps the most important contributions that had been made to the literature of early cabinet history. His study of the cabinet led him to an investigation of the privy council and its committees, the results of which were published in 1927-28 in two volumes entitled *The Privy Council of England in the Seventeenth and Eighteenth Centuries.* Professor Adair in his introduction to the second volume of the present work evaluates Mr. Turner's writings on the cabinet and the privy council and gives some estimate of other modern publications on those subjects.

The work in hand can best be described as an organized compilation of source materials presented in direct quotation and in paraphrase, with some generalization and comment. As a repository of information it is indispensable for the study of the cabinet as an institution during what may be called its formative period. It would not be difficult to find a good deal of fault with it from the literary point of view. There are unnecessary repetitions, idiosyncratic infelicities of style, and masses of illustrative matter that will often seem excessive even to specialists in English constitu-

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tional history. Mr. Turner does not seem to have come to grips with what is, perhaps, the historian's supreme problem, the problem of abridging without distorting. His seeming unwillingness to omit any scrap of evidence may be explained, as Professor Adair suggests, by his desire to make public the material which he had gleaned in years of laborious research from a very wide range of miscellaneous sources, most of it previously inaccessible and not likely to be collected again, and to disclose all the data on which his conclusions were based. This method may at times induce fatigue on the reader's part, but it must be admitted that it demonstrates the intellectual integrity of the author, who, in his own words, has sought "no striking deductions when the sources seemed not to allow them", has tried "to avoid facile explanations of obscure constitutional development", and has not striven for "complete simplicity by omitting contrary evidence when that evidence appeared, since such clarity, save in the opinion of the novice, is artificial, misleading and unreal."

The *terminus a quo* date on the title-page is explained by the fact that the earliest reference which Mr. Turner was able to find to a cabinet council in England, made by an Englishman, occurs in a letter written by John Chamberlain to an English diplomat, Sir Dudley Carleton, on June 8, 1622, in which mention was made of "a choice cabinet counsell to be selected out of the body of the whole [council] table, to whom matters of most secrecie and importance are to be committed" (vol. I, p. 222). The term "cabinet council" or "cabinet", as applied to a group of influential and confidential counselors of the king, was first used by outsiders, not by members of the group so designated, and does not appear for some time in records or official documents, a fact which often makes it impossible to be certain about the personnel and status of the group.

The origin of the cabinet has been a very obscure subject, and even Mr. Turner's research, exhaustive and illuminating as it is, does not give final answers to all questions that arise. It has generally been supposed that the cabinet developed in some way from the privy council, but the process of evolution has not been plain, and there has been difference of opinion as to whether it originated as a committee of the council or not. Miss Foxcroft in her life of Lord Halifax, published in 1898, spoke of the committee of the privy council for foreign affairs as "the germ of the modern Cabinet", and Mr. Godfrey Davies, in an article in *The English Historical Review*, in 1922, entitled "Council and Cabinet,

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1679-88", expressed the opinion that the cabinet and the committee of foreign affairs, during the period immediately following the reform of the privy council by Charles II, were identical. This is the view to which Mr. Turner was led, and nearly half of his first volume is devoted to committees of foreign affairs, the committee of intelligence, "the lords of the committee" and "the committee" in the seventeenth and early eighteenth centuries.

The story, in briefest summary, runs something like this. Under James I and Charles I standing committees of the privy council were appointed to deal with foreign affairs and other important matters, and under Charles I the foreign committee became in effect a smaller council within the privy council. It disappears in the confusion of the Civil War. When the privy council was reëstablished by Charles II in 1660 a committee of foreign affairs reappears. Some memoranda of its proceedings are extant, and it seems to have lasted till 1667. In the following year four standing committees of the council were constituted, one of them being a committee of foreign affairs, which continued in existence till 1679. Several volumes of its minutes are preserved in the Public Record Office. It dealt with important domestic matters as well as with foreign affairs, and it evidently occupied an exceptional position among the committees of the council, for while nothing was to be referred to other committees until first read at the council board, it was expressly stated that this rule did not apply to the foreign committee. In the crisis of the Popish Plot Charles II, in order to appease opposition, decided to reform the privy council and announced his intention of abandoning the use he had been making of foreign committees for the general direction of his affairs. At once, however, he appointed a "committee of intelligence" for "the opening & considering all Advices, as well forreigne as Domestique". Regular minutes of this committee were kept for two years or so, but they come to an end in 1681, and the committee of intelligence, under that name, disappears. In the later years of Charles II's reign we hear again of the committee of foreign affairs, often spoken of as "the committee". After this reign the name "committee of foreign affairs" is seldom encountered, the body previously known as such being generally referred to as "the committee" or "the committee of council" or "the lords of the committee". Many minutes of meetings of "the committee" during the reign of William III are extant; most of them seem to have been written by a secretary of state. A regular consecutive record may have been kept, but if

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so it has not survived. For a generation this body, in Mr. Turner's words, "held chief place under the king in the government of the realm, and the records of the time are filled with allusions to it" (vol. I, p. 133). After the early years of George I the expressions "lords of the committee" and "the committee" were used less frequently to designate the small group of principal ministers, and when they were used they generally refer to the committee of the whole privy council, the names "cabinet council" or "cabinet" being normally given to the small ministerial group (vol. I, pp. 144, 145).

It was Mr. Turner's opinion that the bodies of counselors spoken of in popular parlance as cabinet councils or cabinets—sometimes as "juntos" or "cabals"—were the same as the committees just referred to. A cloud of witnesses give testimony. In some cases what they say is irrelevant as regards the question of identity of cabinets and committees or difference between them. In many cases the evidence for identity looks very strong, though it is unfortunately impossible to give examples of this evidence here. But there are witnesses who speak with another voice, witnesses whose testimony seems to protest against the identity theory, and Mr. Turner was far too candid to suppress it. Despite his opinion that the cabinet was in origin the committee of the privy council for foreign affairs, and though he occasionally makes positive assertions to that effect, it seems clear that he was impressed by the inconclusiveness of the evidence taken as a whole (vol. II, pp. 350-351).

It has been contended that there was a distinction between the cabinet and the committee of council in Queen Anne's time, in that the sovereign was always present at meetings of the former and absent from meetings of the latter. There seem to be very few instances before the reign of George I of meetings that were called cabinets at which it is known that the sovereign was not present, except at times when William III was out of the kingdom, but on the other hand there is evidence that the sovereign was often present at what the record specifically designates as the committee of council. George I, in spite of his ignorance of the English language and general lack of interest in the English scene, appears to have attended cabinets regularly in the opening years of his reign, but after 1717 there are very few notices of the presence of the sovereign at cabinets. His withdrawal, as is well known, had momentous constitutional consequences.

The cabinet was always supposed to be a strictly secret body, and

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it was principally because of its secrecy that it was suspected and disliked in the early period of its history. It would seem, however, that "leaks" were not uncommon. In the eighteenth century outsiders, in contrast with the practice of later times, were often summoned to cabinet meetings to give information. In the Victorian age it was considered a breach of constitutional propriety for any member of the cabinet except the prime minister to make any note or memorandum of anything that was said or decided. This was not the case in the eighteenth century, and many minutes of cabinet meetings, made by individual members for their own use and preserved among their papers, are extant. Unfortunately for the historian, the cabinet never had a secretary until 1916, and there is no continuous formal record of its proceedings similar to the Privy Council Register, but these private, unofficial minutes do something to make up for the lack of an official record, and Mr. Turner was most zealous and diligent in tracking them down. Some of them, as indicated in Dr. Megaro's bibliography, are in the Public Record Office, others in manuscript collections in the British Museum and elsewhere.

In the correspondence and private papers of politicians in the eighteenth century much is said of inner groups in the cabinet, spoken of as "private meetings", "effective cabinets", "conciliabula". In that century, before the reign of George III, the tendency was for cabinets to grow larger, and with increasing membership important questions came to be decided by a small circle of the more influential ministers. A considerable number of minutes of meetings of such inner groups, written by some member present, were found by Mr. Turner, and it seemed evident to him, both from the nature of the business transacted and from the form of the minutes, that such meetings were actually cabinets, though attended by only a few members of the cabinet. He thought that no formal line of demarcation was ever drawn between an "outer" and an "inner" cabinet, as had been argued by Professor Temperley in an article in *The English Historical Review* of October 1912. This opinion may be warranted by the evidence as a whole, but Mr. Turner himself shows that contemporaries sometimes made sharp distinctions between the "conciliabulum" and the larger cabinet. Such difference as there may have been between them seems to have come to an end by 1783. The cabinet in the Fox-North coalition ministry and in the Pitt ministry (both formed in 1783) contained only seven members. It has been suggested that they should be regarded

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institutionally as a continuation of the "conciliabulum". Mr. Turner rejected this view. It seemed to him that the small cabinets of the closing years of the eighteenth century were the result of a policy of reducing the size of the cabinet which began early in the reign of George III. According to this interpretation, it was the "conciliabulum" that disappeared, not the "outer" cabinet.

Three chapters are devoted to the little known institution of lords justices. Between 1690 and 1755 the sovereign was absent from the realm thirty-one times. William III was abroad for a part of every year of his reign but one, and the first two Georges visited Hanover every few years. During ten of these royal absences an individual regent acted in place of the sovereign, but during the other twenty-one there were collective regencies, composed of persons designated as lords justices. The name and the institution were probably borrowed from Ireland, where, in the absence of a lord lieutenant or lord deputy, a number of lords justices carried on the government. In England these collective regencies, Mr. Turner was able to show, were generally, if not always, identical in personnel with the cabinet, though there was a distinction between the same group when acting as a cabinet and as lords justices. The former was an extra-legal body, but the latter possessed definite legal powers. The instructions given by William III to lords justices appointed in 1695, which served as a model for later instructions, are given in full in the second volume. They indicate the scope and limitations of the authority conferred. "If the cabinet was not yet recognized by any formal expressions of law or the constitution, yet the members of the cabinet were again and again given highest authority in the realm to be exercised in a capacity that had the most formal recognition" (vol. II, p. 216).

Let it be repeated, in conclusion, that for any aspect of the history of the cabinet during the period of Mr. Turner's research these volumes are literally indispensable.

ROBERT LIVINGSTON SCHUYLER

George Washington. By LOUIS MARTIN SEARS. New York, Thomas Y. Crowell Company, 1932.—xiv, 560 pp. $5.00.

This is one of the more substantial publications which have appeared in connection with the Washington bicentennial. Making no great pretensions to originality, it brings together in a one-volume biography of moderate length the results of independent investiga-

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tion, with due acknowledgment of indebtedness to special studies by other writers. The author's appreciation of certain recent biographies may indeed seem over-generous. The most striking feature of the book is the closeness with which the narrative follows Washington's own letters, and there is much to be said for thus steadily reminding the reader of the primary material for such a study. As applied in this case, however, the method has its difficulties. A continuous reading of the book gives one too much the impression of following a diligent note-taker as he abstracts document after document, adding his comments as he goes along. Too frequently a paragraph is made up of matters only slightly related, but brought together because they happen to be mentioned in the same letter. References to a given topic are sometimes so far separated as to interfere with a clear view of the problem as a whole; there is also a good deal of unnecessary repetition. In short, it is frequently difficult to see the larger issues in proper perspective. Another result of too close preoccupation with events as seen from the standpoint of Washington's own utterances is that the background of his career is not quite adequately developed.

Of the five hundred odd pages of text, about half cover the eight years of Washington's service as commander-in-chief—twice as much space as that given to the ten years of civilian leadership from 1787 to 1797. The chapters on the war period are, like the others, carefully documented; but the organization of the material, here as elsewhere, leaves something to be desired. Contemporary, and later, discussions of Washington's strategy are noted, but without quite coming to grips with the issues involved—undoubtedly a difficult matter for the layman. The contrast between the greatness of the commander-in-chief and civilian incompetence in Congress is drawn in accordance with time-honored tradition. Does this conventional presentation do full justice to the work of a revolutionary assembly dealing with peculiarly complex problems of war and politics?

In the matter of style, there is a tendency to use short, choppy sentences and to overwork the historical present. The choice of words is not always happy, as in the reference to Washington's "religiosity" (p. 203); and "vaccination" is not quite right as applied to inoculation in 1777 (p. 183). In a book of this kind one may, without being meticulous, question the characterization of Washington in his first election contest as "an also ran" (p. 42), and such infelicities as "blamed upon" (p. 195) and "blame it to" (p. 371). Questionable also are some of the author's judgments.

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If Washington had died in 1765 would he have been remembered as the man who "saved the country in the French and Indian War" (p. 376)? Is it altogether "surprising that Washington should create in the average mind an impression of less versatility than Thomas Jefferson" (p. 418)? The references to Edmund Randolph as a leading opponent of the ratification of the Federal Constitution in Virginia are certainly misleading (pp. 369, 370). Is it quite fair to earlier writers to speak of Washington's efforts on behalf of ratification as "one of the least recognized of his patriotic services" (p. 368)?

In his efforts to find a rational *via media* between indiscriminate eulogy and the sensationalism of the "debunker", Mr. Sears has in the main been successful. Episodes commonly exploited in the latter type of biography are generally treated with candor, but also with good taste and a proper sense of proportion.

EVARTS B. GREENE

War Debts and World Prosperity. By HAROLD G. MOULTON and LEO PASVOLSKY. Washington, The Brookings Institution, 1932.—xx, 498 pp. $3.00.

The reading of this excellent book should be required of every Congressman, federal official and politically influential person in the country, from the local postmaster up. Whether its conclusions are then accepted by them does not particularly matter. General knowledge of the main groups of uncontested facts which it summarizes would alone be sufficient to ensure a far more intelligent and more effective treatment of the war-debt question by our government than any which it has thus far received, and would bring some sort of political and financial order out of the present stupid debt-question chaos.

To the student already familiar with the general range of problems involved, the book naturally does not offer a great deal that is substantially new. Its merit for him lies rather in the convenience of its summaries of hitherto scattered facts and figures, in its sharpening and clarification of obscure or contested details, and in the effectiveness of its presentation. The book begins with a brief but good statement of what is called the economics of international debt payments, demonstrating again the simple proposition, so often ignored or misunderstood, that over time a country can ultimately make payments abroad only in the form of its own goods and ser-

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vices. It then plunges into the history of the Inter-Ally debts and the various debt settlements, both of the United States and of the European creditors; it is the only study, at least in English, in which these facts, together with the agreements and schedules themselves, are all brought together for detailed treatment in one place. Perhaps the most important matter of substance which emerges here, apart from the overwhelming absolute size of the operations themselves and their partially offsetting character, is the fact that the Inter-Ally loans were made chiefly for the purpose of financing purchases *within* the creditor countries, so that few transfer problems arose at the time; and that the proceeds were devoted almost exclusively to war purposes. In the case of loans by the United States, 93 per cent of the total of the pre- and post-armistice loan proceeds were so used. At most, only the remaining 7 per cent can be regarded as having been of strictly economic, non-military benefit to the borrowing nations. In view of the character of much current political discussion, this point deserves especial emphasis. It was primarily the American industrialist and the American farmer, not the foreigner, who profited directly from the loans. The reader will perhaps regret that in their account of the subsequent debt settlements, the authors did not place more stress on the part played by the American government in virtually forcing many of the debtors to come to some sort of agreement, through its control over foreign borrowing. The point is not, however, of major importance.

A similar careful historical and statistical study is then made of the reparations negotiations and settlements. The chapters on German reparations give an orderly and clear picture; and that on non-German reparations, of which less is known in this country, is especially useful. Then the authors plunge into the events leading to the breakdown of the various intergovernment payment programs, beginning with the growing internal difficulties of Germany at the close of the Dawes Plan, and running through the Hoover moratorium to the Lausanne Conference and the virtual abolition there of reparations; the French and other defaults, at the end of 1932, occurred after the book had gone to press. If, in this tale of collapse, the authors seem to imply that the outcome was not only the inevitable consequence of all that happened before 1928, but was also a result which any but the most dogmatic optimism should have foreseen, it is only fair to recall that the passage of time usually imparts to past events an order and a logic not always perceptible to contemporaries.

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In the last chapter, the authors review the high degree of international interdependence in the modern economic world, the patent past unwillingness of the governmental creditors to receive payment from their debtors in goods (an unwillingness manifested not only in tariff policies, but in divers other ways as well), and the manner in which the intergovernmental payments themselves have contributed to the present world economic crisis. They conclude that it would be economically detrimental to the creditor countries to continue collection of the reparation and war debt obligations, economically beneficial to "obliterate" them completely. With this extreme conclusion, stated without qualification as to whether the creditors should attempt to secure concessions in related economic or non-economic fields, other students may not wholly agree. They may also suspect that had more favorable conditions prevailed in fields having little to do with the intergovernment payments, a gradual reversal of the 1924-1929 movements in world finance could have been effected without a collapse; such payments were not the only widening crack in the 1929 bowl of prosperity. But these comments on debatable matters in no way detract from the worth of the book as a whole. It is a work which every person charged with political responsibility in this country, or endowed with an influence on public opinion, should study and inwardly digest. Subsequent action can then safely be left to the dictates of common sense. Our present *impasse* on the debt question is not due primarily to honest convictions or honest differences of opinion on the part of our leaders and representatives, but to the prejudice and distrust which arise out of sheer ignorance.

JAMES W. ANGELL

European Alliances and Alignments 1871–1890. By WILLIAM L. LANGER. New York, Alfred A. Knopf, 1931.—xiii, 509 pp. $5.00.

Professor Langer's work invites attention not only as an account of European diplomacy under Bismarck, but also as an attempt to write diplomatic history in a manner somewhat different from that usually favored by American scholars. He is not concerned to relate all the events that occurred, nor even all those that may have fluttered the diplomatic dovecotes when they did occur, but to select from the mass of documents and monographs now at our disposal those facts that show the broad course of development and to present them in

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relation to underlying factors such as economic changes, changes in military technique, the influence of the press, or nationalist feelings. He would, moreover, abandon the customary search for war-origins, preferring rather to describe a system of diplomacy as it took shape in response to its environment than to write from the standpoint of the conclusion to which it led. Finally, he aims at giving more than the usual attention to the connection between English and continental policies.

There can be no doubt that Professor Langer's work constitutes one of the ablest analyses of the "Bismarckian system" in our language. Distinguished for his own research into various aspects of diplomatic history, he has also digested a vast mass of printed documents and monographs by other scholars. His book is not only learned, but comprehensive in its views and independent in its judgments. It is full of passages noteworthy either because of the freshness of their conclusions or because of the skill with which the author has presented his material.

A high point is reached with the discussion of the Congress of Berlin, especially in the characterizations of the leading statesmen and the defense of their peace settlement. Equally good is the explanation of Bismarck's conversion from the policy of a free hand for Germany to that of an alliance with Austria. The chapter on the Origins of the Triple Alliance argues against the thesis that Italy's adherence was caused by the French occupation of Tunis and has profited by Professor Langer's previous writings on that subject. The treatment of the Egyptian question is distinctive not only because of its severity toward English policy, or rather lack of policy, but because of its emphasis on the importance of the part played by Bismarck behind the scenes.

Particularly striking, both in the narrative of specific events and in the frequent general observations, is Professor Langer's approval of Bismarck. The latter appears as a statesman who found the interests of Germany best served after 1871 by the preservation of general peace and who moved toward that end by methods equally intelligent and praiseworthy. His alliances, with the exception of one aspect of the German-Italian treaty of 1887, were wholly defensive. If he was willing to use the rivalries of nations for his own purposes, he did not seek actually to create ill-will, as he has been accused of doing in such instances as French-Italian friction over Tunis and French-English coolness over Egypt. Far from exploiting other nations, he enabled them to serve their own interests along

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with those of Germany. Thus, to relieve Germany of pressure to protect Austria in the Near East he sponsored a natural association of Austria, Great Britain and Italy against the threat of Russia in that region, "the classic illustration of Bismarck's uncanny sense for the objects and interests of other nations as well as of Germany." His alliance system resulted not only in a series of security pacts for Germany, but helped preserve peace for all concerned by involving the Powers in so complex a web of agreements that no one could move without involving the rest and, by bringing them upon the scene, enlisting the forces of peace in any crisis. This, rather than any mere isolation of France, was the true goal of his efforts. To Bismarck must be given the chief credit for the avoidance of war during the period of his supremacy.

In some respects the attitude of Professor Langer is open to objection. His criticisms of Bismarck tend to be softened by *caveat* and qualification, by an indulgence which is seldom extended to the less gifted contemporaries among whom that statesman moved so masterfully. He is almost contemptuous of the lack of policy he finds in British handling of the Egyptian Question, but does not seem to allow enough for the cross-currents of internal politics which made decisiveness less easy for English statesmen than for a Bismarck. Similarly, it has been suggested that there is perhaps an unjustifiable note of impatience with those contemporaries who withheld from Bismarck that confidence which the modern historian out of the fullness of present-day knowledge is able to extend. Professor Langer thinks of the Bismarck who worked for peace after 1871. But Bismarck's contemporaries can hardly be blamed if they thought only of an earlier Bismarck who had not been zealous in the cause of peace.

In his concluding summary, Professor Langer agrees with one charge against Bismarck as a diplomat—his failure to appreciate fully the new forces at work, especially in his later days, in international relations. He was never a thorough advocate of colonial expansion, never made a serious attempt to check the growth of armaments, and did not see the importance of maintaining close economic connections between Germany and her allies. There is however, merely an allusion to what is perhaps an equally serious criticism. It may be argued that Bismarck's diplomacy was so dependent upon the nice balance of many conflicting interests and ambitions that only a genius like himself could master its complexities. Like the structure he reared for the internal government of

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Germany, it was a "genius system" in a world with an uncertain supply of geniuses. Bismarck knew what he was about and peace was kept, but his contemporaries and his successors from Caprivi down were far from being Bismarcks. Even with the best intentions, could they have followed in his footsteps?

Although he sought to reach the cultivated layman, Professor Langer's audience will almost certainly be found among students. Apart from an occasional touch of irony there is little distinction in his style. It takes effort to read his book for this reason and also because of the great body of material incorporated. Nor can it be said that the author has departed from the usual types of diplomatic history as extensively as one is led to expect from his statement of aims. Diplomatic negotiations receive considerably more attention than the related "underlying factors" which are sometimes mentioned very briefly indeed. But as a partial exemplification of a rather neglected approach to diplomatic history, and still more as an authoritative account of an important period of that history, it would be difficult to praise this book too highly. Its publication must constitute a major event in recent American historical writing.

THOMAS P. PEARDON

BARNARD COLLEGE

A History of Russia. By V. O. KLIUCHEVSKII. Translated by C. J. Hogarth. Volume V. London, J. M. Dent and Sons, Ltd., New York, E. P. Dutton and Company, Inc., 1931.—ix, 338 pp. $5.00.

More than twenty years ago, the publishers brought out the first volume of Mr. Hogarth's translation of this major work, and now at last the series is complete and is even provided with a general index. For reasons still unexplained, the four introductory chapters of Kliuchevskii's history were omitted from the first volume of the translation, and are now appended to the fifth. In the current volume, the main narrative extends from the accession of Catherine II to the death of Nicholas I, while a supplementary sketch, here reproduced with important but unexplained omissions, prolongs the story for something more than another fifty years.

In the displaced introductory chapters, Kliuchevskii argues that the historian of a particular region and a particular people should interest himself much more in the structures and the processes of history than in its cultural achievements—that the local historian

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should be first of all a sociologist (see esp. pp. 192-195). He should give space to the history of ideas—but only of those ideas that have affected, directly or indirectly, a considerable proportion of the people (p. 215).

Within the limits of the general plan, the fifth volume of the history has certain conspicuous defects: the full-flowing narrative of the Catherinian age shrinks to a narrow stream at the beginning of the reign of Nicholas I, and culture-history is thereafter completely lost to sight, while from the beginning of the book to its end, mining, manufacturing and trade are hardly so much as mentioned. For this last shortcoming there is, even in the author's own special theory of history, no justification whatever. In his earlier volumes he had given a certain measure of attention to industry and commerce, and as he went on from year to year, lecturing to his students at the University of Moscow, new factories were rising in an imposing circle around the city. Yet the kindly and venerable scholar had no eye for this New Russia; he had been born in a peasant village, the son of a poor priest, and to the end, modern Russia was to him essentially and almost exclusively a country of peasants, landlords and officials. It is difficult, of course, to overstate the importance of these elements in Russian life, but in this final volume Kliuchevskii did exactly that; and accordingly, industry and trade come off very badly, while the central and local institutions of government, and the fortunes of the landlord class and the peasant mass, are treated in considerable detail.

If the reader believes, as the reviewer does, that the historian has no more business than the geologist to say that in the past this and that *ought* to have been thus and so, he will sometimes be disappointed by Kliuchevskii's attitude—say by his marked hostility toward the European cultural importations of Catherine's time (esp. pp. 105-109), and toward certain phases of the government's foreign policy in the same period (esp. pp. 16-24). Nor need one accept every decision of the author in respect to more specific questions of fact and interpretation: The importance of trade is almost certainly exaggerated, and that of agriculture minimized, in the reference to the Kievan period (p. 210; see also vol. I). The statement that the uprisings of the seventeenth century are not properly to be regarded as revolts of the lower classes against the higher (p. 92) is a more than dubious one, and is quite out of harmony with Kliuchevskii's own earlier characterization of these uprisings (vol. III, pp. 45-46, 250). The eighteenth-century rebellion led

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by Pugachev receives only a few casual words, as against half a chapter devoted to the minor revolt of December 1825. The Revolution of 1905, with its wildfire of peasant disturbances, is hardly more than mentioned, and the reader will therefore be at a loss to understand the granting of reforms by the government, and more particularly its cancelation of the peasant's redemption debt and the reversal of its earlier attitude toward the land-commune.

Such are some of the reservations that must be made in a review that will nevertheless miss its objective, if it fails to give a predominantly favorable impression of the last volume of this history. For Kliuchevskii, Russia is not so remote from the West as the old Slavophils and the present-day Eurasians would have us believe; nor is it so much akin to Western Europe as the "Westerners" and the Marxians have said; and with Kliuchevskii's intermediate interpretation, most foreign students of Russian history would probably agree. In the chapters on the eighteenth century, and in some of the sections on the later period, one discovers the virtues that make this work as a whole literally invaluable to the specialist and to every other person of adult mind who wants to look widely and deeply into the Russian past. Kliuchevskii's history is rich, imposingly rich, in factual material; it is clear in its organization, and sharply stimulating, if not in every case convincing, in its interpretations; the style of the Russian original is usually, though not invariably, clear and incisive, sometimes really brilliant; and the work as a whole produces a sense of weight and power, of the mass and movement of life, that can be created only by the mind of a master.

The reviewer would only too gladly terminate his comment just here; but there still remains the distasteful task of remarking upon the quality of the translation. It may be just as well to put the thing flatly, and to say that the work of the translator is conspicuously and distressingly bad. The English is stiff, laborious, often densely obscure; frequently it confuses, and sometimes it flatly misstates, the meaning of the original. The second word in the English version is "Junker", when it should be "June" (p. 1)—and this is only the first of a long series of errors. Kliuchevskii states that according to the census of 1858, twenty-seven per cent of the population of the province of Voronezh were serfs, whereas the translator says that this province contained "no more than twenty-seven per cent of the serf population of the country" (p. 87). The translation declares that in the time of Catherine, foreign capitalists established firms in St. Petersburg and "issued Russian paper roubles

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of their own" (p. 87); but Kliuchevskii says instead that these firms "even fixed the exchange-value of the Russian paper rouble." *Gosudarstvennoe pravo* means "public law", not "State's rights" (p. 110); and in many other cases "*pravo*" is translated "right" when it should be translated "law". The *Nepremennyi Sovet* or Permanent Council of the time of Alexander I figures in the English text as the "*Navremenni Soviet*, or Temporary Council" (p. 139). On page 272, it is stated that at a certain time the *nadel* or allotment land owned by the peasants had "as great an area as that of European Russia less Finland and the Vistulan *gubernii*", whereas the original says that the area of the allotments was "not less than one-third of the known area of European Russia less Finland and the Vistulan *gubernii*". The Russian word *birzha* preserves something of the sound and all of the contemporary significance of the French word *bourse*, but the translator finds it advisable to render *birzha*, in its adjective form, as *bourgeois* (p. 292).

It would be easy enough to prolong this catalogue of absurdities, but the reader is weary of it, and the reviewer is wearier still. If this major work stood still untranslated, there might be some hope that an adequate English version would soon appear; the present translation does not accomplish the desired end, but stands, nevertheless, in the way of any independent attempt to accomplish it. If the publishers value their good name, one course, and only one, is appropriate: they may still have this English text revised, competently and painstakingly, from end to end—for in no other way can it be made properly to represent to the English-reading public the Russian classic that it now so distorts and obfuscates.

GEROID TANQUARY ROBINSON

International Government. By CLYDE EAGLETON. New York, The Ronald Press Company, 1932.—xx, 672 pp. $4.00.

In this, the second volume bearing the same novel title to appear within a twelvemonth, Professor Eagleton attempts to do more than treat adequately of the relatively new problem referred to by that caption. He attempts to combine the subject matter of what has always been known as international law with what has come to be known in recent years as international organization. He believes, from his own teaching experience, that this can be done so as to produce a work useful for the university student, the college student and the general reader.

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International law and international organization are not treated in separate parts of the book. The former appears in chapters ii, iv, v, vi and vii, and in fact at numerous points all through the work outside of the purely descriptive sections. On the other hand, the author's interest lies chiefly, it is clear, in the field of international coöperation, and to that he gives most attention.

The result is that the presentation of international law is scattered, superficial and incomplete. It is true that the author pretends to treat only "the fundamental but not too technical principles" of that subject. Reviewing the result, one is compelled to question whether the quantity and quality of law presented is of any value to a student or reader who wishes to become even reasonably well acquainted with international law. In compensation it may perhaps be true that the treatment of international organization is enriched and strengthened by this additional material.

When we examine the treatment of international organization itself, there are both strong and weak features to be noted. The presentation of the concept or the fact of an international community (chapter i) is helpful, though the treatment of the problem of sovereignty in section 6 seems (to the reviewer) incompetent and gratuitously intransigent. The insertion of chapters ii and iii on the external aspects of international law and especially on sanctions at this point, before continuing with the international community, seems illogical, and raises further question regarding the wisdom of the fundamental plan. (In chapter iii, on sanctions, the author, by using what seems to the reviewer an unjustifiably broad, not to say loose, definition of government, justifies to himself the title of his book.)

Upon the remainder of the work similar comment might be made. On controverted legal questions such as international criminal jurisdiction (section 42) and the position of the individual (sections 43-45), the treatment seems sound and also constructive. Descriptive passages (chapters viii-xi) are smoothly albeit somewhat sententiously written. The treatment of the League (chapters xiii-xv) is relatively full and effective, though exception might be taken to many detailed statements regarding the relation of the League to the Permanent Court of International Justice (section 117) and to the International Labour Organisation (section 124).

Reversion to the problems and the legal principles of war and neutrality (Part V) seems to constitute an unexpected, if a logical, and even salutary, anticlimax. It does, however, tend to stress un-

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duly the place of the peace problem in the whole field of organized international coöperation and in the activity of the League—a distortion perhaps justified by present circumstances but a logical distortion none the less. On the other hand, the treatment of the problems of outlawry, sanctions, neutrality and the policy of the United States in the concluding chapters seems, except for minor slips ("insoluable" in line 3, page 585; "centuries" in line 9, p. 587), most penetrating, wise and just.

The book will be widely welcomed as a courageous and sturdy attack upon the problems with which it deals.

PITMAN B. POTTER

GENEVA, SWITZERLAND

Unemployment as a World-Problem. By JOHN MAYNARD KEYNES, KARL PRIBRAM and E. J. PHELAN. Edited by QUINCY WRIGHT. Chicago, University of Chicago Press, 1931. — ix, 261 pp. $3.00.

The group of lectures (delivered under the Norman Wait Harris Memorial Foundation) constitutes an interesting combination of the theoretical and practical approaches to the problem of unemployment. In the first of his three lectures, Mr. Keynes outlines briefly the nature of business activity during the years 1925 to 1929, and concludes that it was the cessation of investments which brought the slump at the end of that period. In his second lecture he presents in very much simplified form the theory embodied in chapters 9 to 12 of Volume I of his *Treatise on Money*, namely that profit in business is dependent upon the maintenance of the proper balance between savings and current investment. Maintaining that "the cure of unemployment involves improving business profits", and having shown in his preceding lectures that business profits can be improved only by an increase in investment, relative to saving, the author in chapter iii suggests three lines of approach toward the attainment of this end. These are: (1) restoration of confidence to lenders and borrowers; (2) new construction programs under public auspices; and (3) reduction of the long-term rates of interest.

Professor Pribram outlines five circumstances which have exerted an influence upon the extent of employment the world over, and then turns, in his second lecture, to a more detailed study of the nature of unemployment in Germany and Great Britain. In his last lecture

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he discusses three possible types of relief: (1) measures designed to increase production and provide for the unemployed by creating work; (2) indirect measures aiming to make it easier for employers themselves to adjust production costs to changed prices; and (3) measures intended to distribute the available work and wages among as many people as possible (p. 126).

The concluding three chapters comprise the lectures of Mr. E. J. Phelan, Chief of the Diplomatic Division, International Labour Office, Geneva. In showing the complexity of the unemployment problem, he presents a valuable digest of the attitudes of labor, employer and government representatives toward the problem on the basis of the discussions which took place at the International Labour Conference of 1931. Outstanding here was the unanimity of opinion among these diverse interests with respect to at least half a dozen principles involved. Equally important, however, is the discouraging fact that there was not unanimity as to an immediate way out. The second lecture outlines the international machinery connected with the International Labour Organisation, while the last lecture summarizes its accomplishments in general and in relation to the problem of unemployment.

WALTER H. C. LAVES

HAMILTON COLLEGE

Business and the Public Interest: Trade Associations, the Anti-Trust Laws and Industrial Planning. By BENJAMIN A. JAVITS. New York, The Macmillan Company, 1932.—xix, 304 pp. $5.00.

Mr. Javits sees the imminent breakdown of contemporary economic organization but would lead the way to a land flowing with economic goods where trade associations (which provide "the basic structure of an industrial order that gives promise of the economic salvation of America") would organize economic life. He has a plan for a trade association "which will so manifestly protect and serve the public interest that it will be above suspicion, and will, at the same time, give better protection to the business man in the making of his profits; which protection, it is also claimed, is in the public interest" (p. 53). Beyond he visualizes a "national economic council . . . directed and controlled by industry itself through the medium of the trade association" with international economic relations also organized through trade associations. If business men will adopt his plan, casting away their fear of the law and realizing how much it already

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permits, they will be able to deal with the obsolescence of the worker through old age and with unemployment, and to avoid a large percentage of present expenditure on jails, insane asylums, misdirected education, hospitals, charity and war. Industries will police themselves "to see that people get the right kind of food, the right kind of medicine, proper clothing, better housing and the best ingredients in the various products they consume", (p. 37); the stocks of large corporations will rise to twenty to fifty times their present value and wages will constantly rise.

These results are to be secured by the organization of trade associations (membership in which is voluntary) which would arrange for uniform cost accounting, the allocation of a prescribed percentage of net profits to the amelioration of the condition of workers, and of a prescribed percentage of gross sales to research, an agreement not to sell below cost, detailed reporting of every transaction by every member, agreement not to reduce prices without twenty-four hours notice to other members, monthly meetings to discuss (but not agree upon) prices, the enforcement of rules concerning trade practices and, possibly, control of the building of new plants. Mr. Javits argues at considerable length that the public interest both is and should be the criterion for judgment in the enforcement of the anti-trust laws, and while he admits that the public interest is beyond definition and varies from place to place and time to time, he holds that the proposed arrangements, being evidently in the public interest, would not contravene the anti-trust laws. Furthermore, he believes that agreements between members to restrict output and allocate quotas to prevent overproduction, especially in times of depression, are legal because "overproduction is, of course, directly in restraint of trade. For overproduction means depression, unemployment and social instability. . . . It tends toward monopoly" (p. 66).

Whatever may be the legal position, Mr. Javits is far from showing in his hurried, inconsequent and often exaggerated pleading, how the means suggested would yield the consequences indicated. It is difficult to see how maintaining prices and allocating business during depressions would facilitate recovery by maintaining the buying power of the public, even though wages be maintained, especially if "the only way to end depression is by increased employment at fair wages" (p. 68). Prohibition of sale below cost cannot be universally enforced; and Mr. Javits disposes much too easily of the problem of defining costs. How, for instance, would the cost of

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manufacturing steel in July 1932 have been calculated and what price level would have been set by the members of a Javits trade association? Such an agreement not to sell below cost, coupled with the dissemination of cost statistics, would, he claims, induce all producers to reduce costs to those of the most efficient. But the elimination of price competition as a means of attaining the same end reduces the chance that economies will be passed to purchasers of the product. And where costs can be reduced by operating plants nearer to their full capacity, is price cutting to that end to be permitted? If so, then the instability of prices in the presence of excess capacity for production remains. And if production is restricted by the imposition of quotas are producers alone to decide how much shall be produced?

Indeed, at the root of all such proposals there lies the question whether the planning of production shall be entrusted to producers to the exclusion of all other interests. Mr. Javits has no qualms, partly because he expects the trade-association members to be men who will make the broad interests of society their main guide; profits will be an inevitable but incidental by-product of such an attitude. But in view of his own drastic criticism of business men, to entrust social planning to them is to take a long chance. And even if they are inspired by such broad aims, will profits inevitably follow? And are they alone the best dictators of the food, clothing, housing and education of the community, and of its foreign policy?

ARTHUR ROBERT BURNS

COLUMBIA UNIVERSITY

Convicting the Innocent. By EDWIN M. BORCHARD and E. RUSSELL LUTZ. New Haven, Yale University Press, 1932.—xxix, 421 pp. $3.75.

Society in dealing with its problems constantly needs to be reminded of general tendencies which are in danger of being diverted or held back by circumstances essentially temporary. The present alleged increase in criminal activity associated in the popular mind with the rise of bootlegging and racketeering has given rise in the press to all the symbolism of a war between criminals and the public. War means ruthlessness, a willingness to regard any means as fair, a blindness to facts, a tendency to deal with the "enemy" (the criminals) in an hysterically harsh manner, and a losing sight of the long-run values, both individual and social, in coping with

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socially undesirable conduct. In a sense there is no such thing as injustice—there is only a series of injustices to a series of individuals. Professor Borchard's book is an appalling record of such injustices, of heartache, and of wrong to persons wholly innocent of the crimes for which they were punished. This book reminds us of the essential fallibility, the all-too-human nature of our judicial machinery, of the dangers of personifying law and justice, and of the necessity of utilizing more of our knowledge in dealing with human beings especially when their life or liberty is at stake. Case after case cited by the author turns on mistaken identity and calls into question the value of our rules of evidence, of our methods of examining witnesses and of allowing untrained juries to pass on questions of credibility.

Admitting the tentative nature of many of the conclusions of psychologists, have they not sufficient confidence in some of their techniques to warrant the subjection of witnesses to tests as to the accuracy of their memory, the acuteness of their perception, and their powers of discrimination—tests which would give us information on these points in a more graphic and understandable and reliable form than even the most ingenious questions of an experienced cross-examiner? These are questions which the thoughtful and imaginative psychologist must answer after consulting with the jurist; the jurist cannot answer them alone. He does not know.

Professor Borchard stresses throughout his book the necessity of providing compensation for those improperly convicted. I agree heartily that such compensation should be granted as a matter of right. But it would seem that even greater emphasis should be placed on the devising of ways to prevent these miscarriages. The feature of compensation should remain or be provided where it does not already exist. No human system will be infallible. In addition to the use of psychological techniques to test the reliability of witnesses one might also suggest that criminal prosecutions should be conducted as impartial investigations into the truth and not as battles between a prosecutor with a record to maintain and a political job to keep and a defense counsel whose ingenuity is exceeded only by his bad manners and whose success is frequently determined by his knowing and being able to "see" the proper political authority.

The whole tendency of modern criminology is toward the individualization of the treatment of criminals, as my colleague, Professor Tulin, has so ably pointed out in his recent article in the June 1932 issue of the *Columbia Law Review*. The present hysteria against

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crime—organized crime, if there be such—may destroy or deter the development of that wholesome tendency. Should we not examine further into the causes of the present supposed increase in crime and find whether such factors as the Eighteenth Amendment and the increase in poverty may not be at the root of the trouble rather than the machinery of criminal justice, creaky and cumbersome as it is? Even if that machinery is partly to blame, let us not hastily reconstruct what may prove to be a Juggernaut, capable of crushing many of the innocent along with a larger number of guilty. Professor Borchard emphatically reminds us of this danger and those interested in readjusting our institutions to increase the totality of social well-being, if that be possible, owe him a debt of gratitude for his excellent and timely effort.

JAMES P. GIFFORD

COLUMBIA LAW SCHOOL

Business and Politics in the Far East. By EDITH E. WARE. Published for the Carniegie Endowment for International Peace by the Yale University Press, New Haven, 1932.—x, 250 pp. $3.00.

This study of conditions in the Far East is in the form of two almost unrelated monographs on "Business Contractual Relationships in China: Their Bearing upon the Abolition of Extraterritoriality" and "International Cooperation versus Militarism in Japan". The author's purpose, we are told (p. 4), is "to present to the reader a background which will enable him to view the conflicts in Asia from a perspective that is intelligent and objective". It is a goal only partially achieved. Miss Ware's deep concern over the necessity of the will-to-coöperate in Asia impinges upon her objectivity, and her sanguine attitude toward the existence of a spirit of international goodwill in Japan does not represent as realistic an approach to her subject, as the course of events since the greater part of the book was written would seem to dictate.

Due largely to the submergence of whatever forces there were making for Japanese liberalism under the impact of the military party's seizure of control in Japan, the study of business contractual relationships in China is of decidedly more value than the examination of political conditions in Japan. Here the author has a definite contribution to make to the voluminous literature upon the Far East through her comparisons of Western law and Chinese practice, foreign and Chinese business methods, and of the general

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attitude of Western nations and of the Chinese government toward business contractual relationships. If not as clearly written or as carefully constructed as one might desire, these chapters do afford an interesting basis for considering the effect upon foreign business interests of the abolition of extraterritoriality.

After demonstrating that most of the Western law incorporated into the new Chinese legal codes remains Chinese in administration rather than Western, and that the Chinese law of contract is in reality a law of obligation in which compromise is invariably favored by the court and judicial decisions seldom enforced, Miss Ware comes to the conclusion (p. 96) that "in the main business relationships are in an extralegal, extra-political world". Foreign firms find themselves forced to adapt themselves to Chinese ways of doing business and to accept Chinese legal doctrines. Contractual relationships cannot depend upon consular jurisdiction; extraterritoriality has no direct bearing upon them.

Where the danger of abolition of extraterritoriality does come in, however, is in regard to personal security and the very existence of business within concession areas. Here Miss Ware is not very helpful. "Do the Chinese intend, if they can regain their sovereignty", she asks (p. 113), "to discriminate against foreigners, to make conditions so impossible that they cannot continue to reside and carry on business in China at all? Is confiscation their program?" And her only comment is that the answer to this question rests in the character and purpose of the government in Nanking. This is the element of uncertainty in the situation which is the crux of the whole matter. The abolition of extraterritoriality would work no hardship upon foreign interests in China if the Chinese government could be counted upon, but this is impossible under present conditions.

Miss Ware believes (p. 128) "that with a well-adapted cooperative adventure in concession areas, it might be possible to get rid of the hated word extraterritoriality". But again this seeems like begging the question. The efficacy of such a device to meet China's demands for full sovereignty and to provide security for foreign business would still be dependent upon the goodwill and the stability of the Nanking government. If these were assured, the problem of extraterritoriality would solve itself as foreign business came to realize how little bearing it had upon contractual relationships.

Turning from this question to that of international coöperation in Japan, the author gives an optimistic picture of the forces — liberal leadership, the press, education, parliamentary development,

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and the influence of the new generation—which she finds working against militarism. But she is forced (p. 171) to concede the point that the very general and apparently sincere interest of the Japanese in international coöperation and in the new technique for the adjustment of international differences "ceases to function in the case of Manchuria". Which is as much as to say that Japan favors a policy of coöperation except when she feels that her national interests are affected. This inevitable conclusion in the face of Japan's policy today vitiates the force of much of what Miss Ware has to say on the strength of Japanese liberal sentiment.

FOSTER RHEA DULLES

NEW YORK CITY

Der Bolschewismus: Einführung in Geschichte und Lehre. By WALDEMAR GURIAN. Freiburg, Herder and Co. (St. Louis, B. Herder Book Co.), 1931.—xi, 337 pp. $2.25.

Bolshevism: Theory and Practice. By WALDEMAR GURIAN. Translated by E. I. Watkin. New York, The Macmillan Company, 1932.—x, 398 pp. $3.00.

Dr. Gurian in this book shows that fireworks are not an essential part of a criticism of Bolshevism. He writes from a definite point of view, the Catholic, and he pays relatively more attention to such matters as the Soviet practices with respect to marriage and religion than a critic of another school might. He does not, however, allow this point of view to impregnate his criticism so thoroughly that it loses its significance for those who are not of his faith, nor does he accept the capitalist order as the best of all possible worlds. Moreover, he has a knowledge of Russian history and life, of Marxism, of the machinery and policies of the Soviet government with which writers on this subject are not always equipped. Thus whether one shares the author's point of view or not, he is bound to find the book informing and suggestive.

On the assumption that it is necessary to consider Bolshevism in relation to both Russian traditions and history and its western origin in Marxism, Gurian devotes not quite half of his space to a survey of the historical and social conditions in which the revolutionary movement took root and grew, the doctrine and tactics of the Bolsheviks, their seizure of power and the institutions they established. Particularly interesting are his observations on the relation-

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ship of the Russian intelligentsia and middle classes to the autocracy and his rejection of the theory that had the war not intervened, the operation of the Stolypin land reform and the rapid industrialization of Russia after 1906 would have deprived the revolutionary movement of its social foundation. He regards the fall of the Provisional Government as inevitable because its leaders, with minds fixed on the ideals of western democracy, failed to understand the masses or to realize the need of swift action in the crisis. Lenin succeeded in making the Bolsheviks the spearhead of the revolt against the government, not because they converted the masses to their theoretical program, but because they "knew their own mind, made themselves intelligible, and propounded plausible solutions, which could be carried out immediately and answered to the needs of the moment". The Bolsheviks were able to ride the storm of anarchy and consolidate their power, first, because they had a program of political and social revolution which they held not merely as a conviction, but as a religious creed of such transcendent importance that it justified any means necessary to its realization, and secondly, because they were a compact disciplined party which turned to the masses, worked with them, and was the "sole organized force which existed in the ranks of the proletariat and which seemed completely to correspond with the instincts of the masses." Communists and many others will question Gurian's belief that the effectiveness of the Bolshevik rule in Russia is due to the combination of radical Utopianism and a dictatorial power which "corresponds so perfectly with the Russian mentality". The later sections of the survey discuss the structure of the Soviet state, the rôle of the party, the administration of justice and terrorism, and certain social policies. The Bolshevik state, Gurian concludes, is an absolutist state guided only by considerations of political expediency and utilized by the party to set up a particular social order. One may grant this and still be unconvinced that Bolshevik policies regarding marriage and religion are motivated solely by the intention to destroy all institutions which might oppose the absolutist claims of the state and the party.

The last half of the book gives a critical analysis of the social and economic policies of the Bolsheviks, of the structure of the party, of its theoretical foundations and the characteristics of the Bolshevik social order. While these chapters contain much interesting information, this is incidental to the development of the thesis that Leninist-Marxism cannot survive because it is based on the false as-

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sumption that "social and economic activity determines man's entire being . . . it represents the entire significance of his life." Gurian attributes the rise and survival of Bolshevism not to its validity as a Utopian doctrine of salvation, but to the failure of bourgeois society led astray by the materialistic liberalism of the nineteenth century. "Bolshevism", he says, "is at once the product of bourgeois society and the judgment upon it". And again, "It is the inevitable product of a world for which Christianity with its transcendental orientation has become a matter of private faith which no longer influences the organization of public life".

Liberals may derive little comfort from the assertion that the enemy risen up to destroy them is the child of their own folly. They may deny that the only alternative to a futile defense of the existing capitalist system is the acceptance of the Church's position, which like Bolshevism rejects the division of society into separate public and private spheres but does so not to force man into an unnatural mold, but to permit him freely to develop "in accordance with his true nature". But liberals must, it seems to me, accept Gurian's contention that Bolshevism is a force which compels reëxamination of the foundations of our governments and the effects of our social action; which exposes "the contradiction between the actual condition of contemporary society and the ideas on which it is based" and reveals the limitations of parliamentary democracy and the "absurdity of expecting an economic system left to the free play of its own forces to achieve harmonious self-regulation in a period of financial and industrial monopoly".

An appendix of ninety pages contains a number of interesting documents.

H. H. Fisher

Stanford University

The Concepts of Sociology. By Earle Edward Eubank. New York, D. C. Heath and Company, 1932.—xvii, 570 pp. $4.80.

Professor Eubank has undertaken an elaborate review, classification and analysis of the various concepts which present and recent sociologists have employed as *leitmotifs* in their respective systems. He hopes in this way to arrive at the "major concepts" of sociology, in terms of which he proposes his own organization of sociological theory. That there is need for an analysis along these lines is amply clear. The pragmatic tendencies of American sociology, pursued

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without adequate theoretical preparation, have led to a state of confusion which Professor Eubank excellently reveals. The exclusive insistence on research, so effectively encouraged by certain Foundations, has no doubt helped to clear up many specific and localized problems but has only deepened the major confusion. Professor Eubank is certainly working in a direction which badly needs exploration, and he is surely right in his statement that until the concepts of a subject are organized into a definite and logical system it is not entitled to the name of science. He deserves commendation for the painstaking analysis which he offers of the existing condition of things. All who believe that scientific salvation is attained by forthright research alone can learn a great deal from this volume.

On the constructive side it is less satisfactory. It is stronger in the more mechanical art of classification—useful as that is—than in the actual analysis of the underlying problems. I distrust, to begin with, his use of the expression "the conceptual approach"—as though it were one of several ways of getting at truth. I doubt his criteria of a "true scientific concept", in the statement of which he uses the three terms "meaning", "ideal" and "concept" as if he were speaking of three different things (p. 31). I do not feel satisfied with his definition of the term "social" itself (or as he prefers, "societary") as "the technical designation for all phenomena of, or pertaining to, *associated human beings*" (author's italics). Apart from the limitation to human beings, this definition takes no account of the important distinction between the properly social phenomena of relationship and the phenomena which are conditioned by that relationship. In particular, as appears in the sequel, it does not admit the distinction between the cultural and the social, without which we cannot arrive at a clear perspective of sociology. Another essential distinction which is not sufficiently brought out is that between systems of relationship (such as institutions) and systems of related beings, or groups. The former yields a large and important category of sociological concepts to which very little attention is given.

The author's proposed reorganization of the categories of sociological theory is open to criticism on these grounds. He suggests four main divisions, "societary composition", "societary causation", "societary change" and "societary products". These are to be "*the grand continental divisions of our map of the planet of sociological theory*" (author's italics). Here one might well question whether causation and change do not fall within the same "grand category", and one might still more doubt whether the confines of

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sociology are not unduly extended (or blurred) if we seek to include without qualification the vast study of human culture.

With the limitations just suggested Professor Eubank has achieved a useful and discriminating piece of work. But he spends rather much time on preliminaries and rather much energy on sundry lists and catalogues. One would have liked to see more critical discussion of the logic (or lack of logic) underlying the listing made of the categories used by various others—take for example the category of "social distance". One would have liked an examination of the coherence and significance of the whole body of categories employed by different sociologists, rather than the detailed comparison of one list with another. In short, the task undertaken by Professor Eubank is a profounder one than he has realized—or at least there is a profounder task to be done. But it can be said that the author has prepared the way for it. The volume contains a very elaborate bibliography.

R. M. MacIver

The Balance of Births and Deaths. Volume II: *Eastern and Southern Europe.* By Robert R. Kuczynski. Washington, The Brookings Institution, 1931.—xii, 170 pp. $2.00.

The publication of this volume marks the completion of the author's penetrating analyses of the reproductive vitality of the populations of Europe for the years prior to the close of the third decade of this century for which adequate data on fertility and mortality were obtainable. In Volume I of this series (The Macmillan Company, 1928), familiarity with which is recommended as essential to an understanding of this study, Kuczynski demonstrated through the statistical device of the net reproduction rate that in northern and western European countries 100 mothers bore only 93 future mothers in 1926. The well-founded conclusion was that the continuation of the fertility and mortality of 1926 would lead eventually to the extinction of the population of that region.

The volume under review examines the reproductivity of the populations of eastern and southern European countries in so far as the availability of birth statistics permits. The trends of fertility and mortality are shown to have followed a course quite similar to the tendencies manifest in northern and western Europe. During the last few decades both have fallen but the extent of the decline has not been the same in all countries nor has the decrease in mortality

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corresponded equally, in all instances, with the drop in fertility rates. The result is that the populations of the various countries studied reveal marked differences in their prospects of maintaining an increase in the future. Of all the populations considered that of Russia may be expected to increase for years to come. The net reproduction rate of Russia's population in 1929 was 1.7, that is, 100 mothers bore nearly 170 future mothers. Of the populations of southwestern Europe statistics for Bulgaria alone are adequate to allow the computation of net reproduction rates before and since the war. From 1906-1910, the net reproduction rate of Bulgaria's population was 1.75. By 1929 it had fallen to 1.29. Fertility and net reproduction have declined in central Europe also. The net reproduction rate in Poland, in Lithuania and in the eastern provinces of Czechoslovakia compares with that of Bulgaria. In Hungary it was 1.2 in 1929 while in Austria, in the western provinces of Czechoslovakia, in Esthonia and in Latvia population is not reproducing itself. The populations of Southwestern Europe, notably those of Italy, Portugal and Spain, are shown to be reproducing themselves only moderately. In fact it appears, as the author points out (p. 63) that except for Russia "there seems no country left in Europe with more than an average of four children to a woman passing through child-bearing age; in some countries the average is as low as two". In spite of the vigorous campaign that has been carried out under the Fascist régime for a higher birth rate, the decline of fertility in Italy has been sufficient to warrant the assumption (p. 59) that "if fertility and mortality should continue to develop for another decade as they have in the last decade, the population will no longer hold its own". Even more interesting is the author's significant observation relating to the theory not infrequently encountered, that there is a high correlation between illiteracy and fertility. The case of Portgugal is cited in contrast with this view. According to the census of 1921, 56 per cent of the male population of Portugal and 73 per cent of the female population could not read, "and yet fertility is far from being high" (p. 59).

Not a few of the hypotheses regarding fertility that have gone unchallenged for years must in the light of more recent analyses be revised. The achievements of such scholars as Kuczynski have done much to qualify the fatalistic interpretations of the *Essay on Population*. The more tempered and plausible theories offered by Brownlee, Gini, R. A. Fisher and others may be expected to gain

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favor as demographic developments in the western world come more generally to be recognized. The prospect of the shrinkage of the populations of the important nations of this hemisphere and of rapidly increasing numbers in Russia and other regions of the globe foreshadows the probability of violent shifts in the balance of world power during the decades that lie ahead.

Not only has Kuczynski contributed a most valuable appraisal of the reproductivity of the nations of eastern and southern Europe, but in this study students of population are provided with a comprehensive analysis of the completeness of birth registration in Europe supplemented by a presentation of all the available data which reflect the trend of fertility in the countries studied. It is deeply to be regretted that a similar study has not yet been made for the United States.

WATSON A. BAUMERT

ANTWERP, NEW YORK

The Birth of the German Republic. By ARTHUR ROSENBERG. Translated by Ian F. D. Morrow. New York, Oxford University Press, 1931.—viii, 286 pp. $4.75.

Dr. Rosenberg's volume tells the story of the gradual dissolution of the Bismarckian Empire and of the origins of republican government in Germany, but stops short at November 10, 1918, before the actual birth of the present republic at Weimar. For the avowed purpose of exposing historical untruths Dr. Rosenberg has condensed in a small number of pages a voluminous documentation on a period particularly rich in important events. The author, at present professor of history in the University of Berlin, was eminently fitted for his task. He was from 1925-1928 a member of the Reichstag Commission for the investigation of the causes of the German collapse. In addition he was committee reporter for the so-called "stab in the back" theory—the theory that the German collapse was caused by the subversive influence of socialist propaganda rather than by the failure of the army. Prior to November 10, 1918 he was not affiliated with any political party or organization. If he has any personal bias, Dr. Rosenberg has succeeded admirably in suppressing it. He adheres unswervingly to the thesis that the collapse of the Empire was due to the defeat of the army and not to socialist propaganda. Because Bismarck was unable to weld the diverse elements in the German people into an organic whole, the

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Bismarckian Empire, according to the author, bore within itself from the day of its establishment the germ of its dissolution. It was built up on a compromise between the German middle class and the Prussian military aristocracy. To maintain a balance of power between the two parties necessitated a chancellor of Bismarck's caliber. Gradually the Old German Conservatives, the Center Party and the industrial proletariat made their opposition felt and demanded a share in the government. Despite the various discontented elements in the Empire, Germany, because of the *Burgfriede* or party truce, was enabled to present a united front to the enemy in the World War. But as the war dragged on, the tide of enthusiasm ebbed and the discontent of the masses became articulate. It gradually became manifest that the army must win decisively if the old system was to continue. In 1916 public opinion forced the Kaiser to appoint Hindenburg and Ludendorff to the Supreme Command of the army. By this time the power of the military aristocracy had been broken by the appalling sacrifice of life on the Western Front. Henceforward till September 1918, we are told, Ludendorff as dictator wielded absolute political and military power. Although Dr. Rosenberg regards Ludendorff the soldier as a military strategist of the first order, Ludendorff the politician is to him only "the stopgap between two periods in German history". In the early autumn of 1918 Ludendorff realized that the German army was hopelessly defeated and through his agent urged the Reichstag to take over the executive power. The Empire, bereft of its main support, a victorious army, had collapsed. So quietly was Germany's first parliamentary government established that both the masses and the supporters of the Reichstag failed to see that a decisive revolution had taken place. This lack of understanding and confidence was the chief cause of the November Revolution. At no time, the author emphasizes, was there a serious desire to carry through socialist measures. Although Dr. Rosenberg's thesis may appear all too simple, he brings forward an impressive array of evidence to support it. The briefness of the account has the advantage of eliminating insignificant detail. It should prove invaluable in dissipating many current misconceptions regarding the internal affairs of Germany during the war. There is no better account of the historical background of the present German republic than this book.

ROBERT R. ERGANG

NEW YORK UNIVERSITY

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American Foreign Policy in Mexican Relations. By JAMES MORTON CALLAHAN. New York, The Macmillan Company, 1932. —x, 644 pp. $4.00.

Professor Callahan's volume, presented as "the first general historical view of American Mexican policy in the consideration and solution of continuous problems arising between the two countries", invites comparison with Professor Rippy's *The United States and Mexico*, which was announced six years ago as "the first general survey of the diplomatic relations of the United States and Mexico" and which is now out in a revised edition brought up to date.

As to substance the outstanding difference between the two books is that Callahan gives detailed attention to the period before 1848, which Rippy believes to have been adequately covered by Manning and Rives, and to the epoch of Diaz, which Rippy declares to be "marked in general by a pacific intercourse yielding comparatively little for the historian to record". To the earlier period Callahan devotes 188 pages against Rippy's 14, and to the later 165 pages against Rippy's 52. Rippy, on the other hand, gives 281 of his 385 pages to the three decades beginning in 1848, to which Callahan gives only 180 of his 644 pages. With respect to the period preceding 1848 Callahan does not add much to the accounts of Manning and Rives. His chapters on the Diaz era are, however, of great value as well as interest. In connection with his description of the evolution of Seward's policy with reference to the French imperial adventure in Mexico, a subject on which Callahan did pioneer work more than twenty years ago, it is curious to note his failure to give due weight to the consideration that the most important factor in the decision of Napoleon to withdraw his troops was probably not the representations of Seward but rather the beginning of a shift in the European balance of power, in comparison with which, as observed by a contemporary English paper, the Mexican enterprise was "but a holiday diversion".

For the periods covered in detail by both Callahan and Rippy, the difference in treatment consists chiefly in Callahan's almost complete abstention from the expression of personal opinion, as contrasted with Rippy's frequent shrewd and sometimes caustic comments. Callahan seldom goes beyond the quotation of an editorial from the New York *Nation*, to which he is singularly addicted. The reserve maintained by Callahan may be accounted for in part by his comparative unfamiliarity with the Mexican side of the controversies which he

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examines from the point of view of American policy; he cites only two Spanish language sources, both inexactly, and one of these he has apparently consulted only in the translations available at the Department of State. In general, however, he appears to have understood the Mexican contentions to such extent as was necessary for a running exposition of American policy. A possible exception relates to the recent oil and land legislation.

A special feature of Callahan's book which assists the reader in appraising the personal factor in American-Mexican relations is the inclusion of brief biographical sketches, at the beginning of each chapter, of the presidents, secretaries of state, and heads of diplomatic missions figuring prominently in the events under review.

The author's somewhat labored and infelicitous style necessarily limits the appeal of his book to the general reader. Some readers will be annoyed by his evident aversion to the use of commas and by the absence of a bibliography—which, however, is largely compensated by the fullness of the chapter references.

EDGAR TURLINGTON

WASHINGTON, D. C.

International Adjudications. Edited by JOHN BASSETT MOORE. Modern Series. Volume IV: *Compensation for Losses and Damages Caused by the Violation of Neutral Rights, and by the Failure to Perform Neutral Duties.* Published for the Carnegie Endowment for International Peace by the Oxford University Press, New York, 1931.—xxvi, 600 pp. $2.50.

The first three volumes of Judge Moore's *International Adjudications* have previously been reviewed by the writer in the QUARTERLY (vol. XLVII, p. 118, March 1932). This fourth volume is even more interesting; an even more memorable monument to its author and editor. Here is the complete record of the Mixed Commission under Article VII of the Jay Treaty, an international adjudication which was "the precursor"—"the direct and immediate progenitor"—of the Geneva arbitration of 1872 in the Alabama claims which reached "the high-water mark of international arbitration up to the present time". This Commission under Article VII disposed of claims by American citizens against the British government for violation of neutral rights and of claims by British subjects against the government of the United States for violations of neutral duties. The net result of the work of the Commission,

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financially expressed, was the payment of over eleven and a half million dollars by the British government to American citizens and the payment of something less than $150,000 by the American government to British subjects. It was largely due to this precedent that the British government paid the United States one hundred times this latter amount on account of the Alabama claims some seventy years later. Jay's treaty was abused and the law of neutrality is still abused, but here is tangible evidence of the merit and effectiveness of both.

All that the reviewer said of the evidence of Judge Moore's meticulous and thorough scholarship in the first three volumes of the series, is applicable to this fourth volume. Here again hitherto unavailable manuscript materials are made permanently accessible. The archives of the United States Department of State and of the Public Record Office in London have supplied much of the data included in this volume. Throughout, the careful summaries and annotations of the editor make the rich store of original texts doubly valuable.

In accordance with his general plan, Judge Moore has first presented the historical background, beginning with the events out of which the claims arose and concluding with the negotiation of the Jay treaty. There then follows an account of the steps taken to carry out the treaty: the organization of the Commission; its functioning and the difficulties it faced; an analysis of the claims and the details bearing upon the close of the proceedings. Judge Moore has also inserted a highly useful chapter descriptive of British prize jurisdiction and procedure. The narrative is enlivened by such matters as the extracts from the diary of Samuel Bayard after his arrival in London as agent for American claims and the account of the pre-prohibition banquet to Mr. Gore on his return to Boston.

Part II contains the texts of the opinions and awards in fourteen of the cases. The opinions of Pinkney and Gore in the case of the *Betsey*, Furlong, master, teem with convincing reasoning and interesting expositions of the rules of international law, not only on questions of neutrality but on such questions as arbitral procedure, treaty interpretation and the measure of damages. Pinkney's opinion in the *Neptune*, Jefferies, master, contains a remarkably fine analysis of the still troublesome question whether a neutral may lawfully carry provisions to a belligerent. The reports of the *Sally*, Choate, master, before the High Court of Admiralty and the Lords Commissioners of Appeal are of great value in studying the Rule of the

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War of 1756 in which are found the beginnings of the controversial modern doctrines of continuous voyage and ultimate destination.

The perusal of this volume would do much to dispel some of those "current illusions" about international law which Judge Moore has already attacked so vigorously and effectively. Judge Moore's reputation as historian and international lawyer needs no enhancement; if it did, nothing could more admirably serve that purpose than this volume.

PHILIP C. JESSUP

International Legislation: A Collection of the Texts of Multipartite International Instruments of General Interest. Edited by MANLEY O. HUDSON. Washington, Carnegie Endowment for International Peace, 1931. 4 vols.—cxviii, xix, xv, xv, 3218 pp. $15.00.

International legislation is a new term, perhaps unjustified in strict meaning, yet necessary to describe what is now becoming the most important field in the international law of peace. It is the most deficient part of the international system, a field in which improvement is urgently needed and sought. Its importance is sufficiently evidenced by the size of this work, which gives 229 legislative instruments since the creation of the League of Nations, aside from subsidiary documents.

Dr. Hudson's important work may be described as the introduction to, and the foundation for, study in this field. The collection is of course valuable as a reference work. Not every one can have a set of the *Nouveau recueil général*, or of the League of Nations *Treaty Series*, on his desk; and it is distinctly helpful to have in this convenient form the modern treaties which international lawyers must most often consult. But the work serves other purposes as well. Dr. Hudson has done much, especially in his Introduction, toward clearing up the terminology in this field. In such treaties as these are to be found not only modern tendencies and means of solution of current problems, but also the methods of legislation. For the study of the development of international legislation one needs more than the mere text; and so for each treaty Dr. Hudson gives us a brief historical and bibliographical statement.

The purposes of this effort, as stated in the Preface, are: (1) to make multipartite international instruments more readily accessible to the legal profession; (2) to direct attention to the results of a

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process of international legislation which has now assumed large proportions. The texts are often available elsewhere, but their inclusion here is justified on the ground that (1) some are not easily accessible, (2) other publications do not trace the systematic growth of international legislation, (3) systematic presentation may facilitate comparison for the benefit of the drafters of treaties. The author explains that he has included all multipartite instruments which, in his judgment, have a general and permanent value, though not all of them are to be classed as treaties (e. g., the rules of procedure of the Assembly of the League), nor are all of them in force. "An effort has been made to reproduce the texts of all instruments by which three or more states have set up any administrative agency for the conduct of their normal relations, or by which they have laid down the bases for the conduct of their future relations and co-operation".

The order followed is chronological, rather than by subjects, in order to emphasize the development of international legislation; but it is varied by following each text with subsequent instruments which have modified it, and a subject index is given. A Chronological List, in French and English, is found in the first volume, for all four volumes; and in each volume a list for that volume. A Subject List is also given, in English only, and with subsidiary instruments for the most part omitted. There is also a List of Abbreviations, and an index for the entire work at the end of the last volume.

For each treaty, information is given as to its date and as to whether it is in force. The chronological order of listing is fixed by the date of signature, rather than by the date of coming into force. Thus Number 22 was signed on June 30, registered with the League of Nations on August 12, and is indicated as in force on September 30, 1920. An instrument is sometimes "Signed", sometimes "Adopted", sometimes "Opened for Signature". Such variations indicate, rather than inconsistency, the careful study which the author has given to the various processes of international legislation. For each treaty, also, there is a brief editorial note concerning its history, a list of ratifications or adhesions and sometimes a list of signatures, and a bibliography which gives citations to other sources for the text, and also to articles dealing with that treaty. The bibliographies are of uneven size and merit. Extensive bibliographies are given for the League of Nations and for mandates, and none at all for the Permanent Court, for which reference is made to outside bibliographies. It is surprising to find, on page one, that Hoijer

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is included, while Gonsiorowski is omitted. Reservations to treaties are sometimes printed, sometimes not; notice should always be given of them if they exist.

Dr. Hudson contributes a sixty-page Introduction which, in spite of its concise brevity, is the best study yet offered of modern methods of international legislation. It discloses some of the startling uncertainties in this field, and presents many fascinating problems. While many of these cannot yet be solved, he has constructive suggestions to offer, usually derived from practice. His viewpoint is always practical and realistic. With many of his statements it would be easy to quarrel, but the quarrel would frequently resolve itself into disagreement over the meaning of such words as "law" or "legislation" or "treaty". The consensual theory, of course, pervades any such discussion. No state, it is admitted (p. xvii), can be bound by a legislative instrument unless it is a party thereto; but Dr. Hudson suggests that consent may be manifested in various fashions, perhaps even by lack of dissent. Statesmen are shaping their work in this practical manner, but it would seem still a little early to use so strong a word as "insupportable" concerning the Cuban legal objections to the manner in which the Statute of the Permanent Court was to be revised.

Conference methods, it is shown, have been much improved, as to both preparation and procedure, and also by continuity; but the author thinks that general rules of procedure to be used by all conferences are impossible. This reviewer found some difficulty in understanding § 17, "Parties to International Instruments". Can the head of a state—in a democracy—be a *party* to a treaty? If he is a party, is his state also a party? In the recent St. Lawrence waterways treaty, the President and the King "have decided to conclude a treaty"; but Article 10 says that it must be ratified according to the constitutional laws of the "High Contracting Parties". Who are the parties to this treaty? There seems to be some confusion in the drafting of treaties through the retention of archaic forms. And it remains a difficult question whether the head of a state may, through his action regardless of constitutional law, bind his state.

With regard to signature, the author's conclusion, reduced to its essentials, seems to be that signature expresses the willingness of a state to be bound, provided it later agrees that it is willing to be bound —which seems somewhat subtle. Almost as subtle is the treatment of ratification, which seems to assume that ratification is not necessary unless definitely called for. To emphasize tendencies in the right

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direction is not sinful; but to say that "an instrument may provide that it is not to be ratified and the validity of such a provision cannot be questioned" (p. xliii) seems distinctly questionable. The precise office served by ratification, he observes, is not always clear. Interesting differentiations are supplied between multilateral and multipartite treaties, between accession and adhesion, between conditional ratification and reservations, etc. These sixty pages are packed full of information, and develop the methods by which it is now sought to evade the difficulties inherent in the process of making international law.

It is an excellent and thorough work, with which little fault can be found. It is well organized, convenient, and gives sufficient information; it has exceptionally few typographical and such errors. One wonders if it is to be continued, and if so, how? The author and the Carnegie Endowment for International Peace, whose support of this enterprise should not be overlooked, should be encouraged to continue it. Subsequent treaties could of course be added in later volumes; but it is even more important that changes in treaties already printed should be supplied, and this presents a real problem. It would fail much in convenience if such information were to be printed in later volumes; all information concerning a treaty should be with that treaty. Perhaps it would be possible to issue from time to time printed slips of paper containing information concerning later accessions, expiration, bibliography, etc., numbered according to the treaty, to be inserted by the subscriber in his own set.

CLYDE EAGLETON

NEW YORK UNIVERSITY

The United States since 1865. By LOUIS M. HACKER and BENJAMIN B. KENDRICK; with a foreword by Dixon Ryan Fox. New York, F. S. Crofts and Company, 1932.—xx, 775 pp. $5.00.

The merits and defects of this book appear to reflect the training of the principal author, Mr. Hacker (only the first of ten sections is by Professor Kendrick). He has been a journalist and working economist and is now associated with the *Encyclopaedia of Social Sciences.* His uncloistered mind is open to the trends of modern civilization and his perception and judgments are penetrating. If his point of view is liberal, he usually offers ample support for his conclusions, though occasionally a tendency to dogmatize beyond the warrant of the evidence may be charged against him.

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But the narrative historian is all but lost in the encyclopedist. The book is less a history than a comprehensive, up-to-the-minute aggregation of articles. Impatient of the futility of politics and political annals, the author lumps them into one sketchy prefatory chapter for each major period and turns to an analysis of the corresponding economic forces. But his political thread is so tenuous that nothing substantial can be hung upon it, and the untutored reader is left to grope rather desperately for interrelation and continuity.

Statistical tables from the census and from official reports cram the pages. One staggers under details of tariff schedules, production and trade, immigration and sterile projects for railroad legislation; makes the acquaintance, in a single page, of the Agricultural Wheel, the Texas State Alliance, the Farmers' Union, the National Farmers' Alliance and Industrial Union, the National Farmers' Alliance and the Farmers' Mutual Benefit Association, with hardly more differentiation than their names afford; and is reminded that Claude G. Bowers delivered the keynote speech at the Democratic convention of 1928. In a word, the function of digestion has not been performed.

With so catholic a policy of admission, it is surprising that little or no room has been found for matters as demonstrably important as the struggle between Hayes and Garfield and the Stalwarts, which contributed so much to the articulation of liberal sentiment, and raises the question whether Arthur's sponsorship of reform flowered from a change of heart or from a perception of the handwriting on the wall; the devices by which the piratical Drew and Gould wrecked railroads and those by which Morgan and his fellows restored the roads and public confidence, while building up their own fortunes and ascendency; the instructive contrast between the lack of credit in 1873 and the lack of money in 1893 as causes of the farmers' woes; the evidence of sectional chaffering in the passage of the McKinley tariff and the Sherman silver bills; the record of selfish opportunism in Bryan's career before 1896, significant in explaining his juggling of the Spanish treaty, his attitude at the convention of 1912 and his solicitude for "deserving Democrats"; the dubious maneuvers of Roosevelt in his dealings with conservative senators and business leaders; the energizing of the Interstate Commerce Commission through the shifting of the burden of proof in rate controversies to the railroad companies; the Democratic platform of 1908 as a halfway house between the Populism of 1892 and the Progressivism of 1912; the damning contrast between Roosevelt's original reasons

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for his Panama policy and the more astute revised version of Root; the sapping and mining against Wilson by Lodge and his ilk during the peace negotiations; the shiftiness of the Republican world-peace advocates whose recommendations Wilson adopted; the educational value of the experiment in state socialism by the Nonpartisan League and of the guild-socialistic Plumb plan; the attack by the Latin American nations upon a "Yanqui"-dominated Pan-Americanism at the Santiago conference in 1923 and the consequent differentiation between the Monroe Doctrine and a new Caribbean doctrine by Secretary Hughes. In the interests of clarity and comprehensiveness it is unwise for a historian to turn his back upon any aspect of his subject, even politics.

But to criticize the historian for surrendering to the encyclopedist is to do scant justice to the insight and originality which make this book, despite its defects, important. Repeatedly one comes upon clairvoyant passages. The Populist movement is seen as the last great stand of the farmers against a new dispensation destined to destroy their strength as an economic class. John Hay's "open door" policy betrays a superficial contentment with equality of trading rights, merely the shell of the Chinese nut, while the Europeans make off with the kernel, financial, railroad and mining concessions. The alleged responsibility of the sugar trust for the Spanish War is discounted by evidence that, for solid business reasons, America's business men did not want Cuba.

Best of all is the impressive review of the trends of our own day. One looks behind the wishful thinking of "rugged individualists" to the demands upon government for aid to every industrial class and to a consequent pressure upon the taxpayer which suggests imperial Rome. Indeed, the analogy of Rome and America might have served the author well. He observes that private philanthropy is helpless to save a situation which maldistribution of wealth has created. He marks the demoralizing transition from a debtor nation, developing the home market and paying for its borrowings abroad and for raw materials for its factories with the products of its farms, to a creditor nation, concerned with a surplus of production, foreign markets for its manufactures, saved capital seeking investment, food costs and surplus man power. Is the cultural apparatus of a "middle-class economy", its facilities for disseminating ideas and experiences, to realize its higher possibilities or to be standardized and commercialized into a cult of Mammon? Our artists and craftsmen have, the author observes, already demonstrated that modernism

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is "exactly fitted to the American temper." That temper finds expression in the lyric creations of Marin and O'Keeffe and the brooding subtleties of Robinson as well as in the strident assertiveness of the Empire State Building and the mordant satire of Lewis, Hopper and Burchfield, the two latter artists, by the way, curiously omitted from a too uncritical catalogue of names.

For the learning, spirit and discerning intelligence of this book the reviewer has nothing but praise. As it stands, it is an invaluable citizen's reference manual. A better arrangement and more judicious editing would make it an excellent history.

CLIFTON R. HALL

PRINCETON UNIVERSITY

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BOOK NOTES

Having achieved a *succès de scandale* in Europe, Signor Curzio Malaparte's *Coup d'État; the Technique of Revolution* (New York, E. P. Dutton and Company, Inc., 1932; 251 pp. $2.50) has now been offered, in a pleasing translation by Sylvia Saunders, to American readers. The author is an Italian Fascist who not only participated in the seizure of Florence in 1922 and in the memorable march on Rome, but has written a volume of Fascist verse and is known as an intimate friend and associate of Mussolini. According to Signor Malaparte, the old Napoleonic style of *coup d'état* has become obsolete and in its place has risen a new style, or technique, appropriate to the machine age in which we live and first employed by the super-tactician Trotsky in the Russian revolution of October 1917. With a view to making clear precisely wherein the new technique differs from the old, the author depicts vividly in his opening chapter the situation existing at St. Petersburg and throughout Russia in the last days of the Kerensky régime and then tells, step by step, how the revolution was engineered and directed by Trotsky, largely over the head and without the approval of the Bolshevik Central Committee. Reduced to its simplest terms, and viewed apart from the political and social forces that must necessarily condition it, the new fine art of revolution consists in abjuring a frontal attack upon the state and its representatives in power and substituting a flank movement aimed at paralyzing its nerve centers. Railway stations, post offices, telephone and telegraph offices, ports, bridges—these and similar instrumentalities by which the high authorities of the state keep in touch with the social and economic body, are first to be seized, and with them grain depots, power plants, gas and electric light plants, water mains and other utilities which cannot be closed down without paralyzing daily life and striking fear into the hearts of the people. Only because Trotsky started in this manner, leaving seizure of the seat of government and dispersion of Kerensky and his ministers until later, did the Bolshevist *coup* succeed, and only because, also, Trotsky recognized the right moment to act and refused to be held back by the Fabian Lenin. Having shown what the modern technique is, as developed by Trotsky, and

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having, further, argued that there is not a state in Europe today in which the same method might not be employed with hope of success, Signor Malaparte reviews in a series of chapters outstanding *coups d'état*, successful or otherwise, in the Europe of the past fifteen years (chiefly those in Poland, Germany, Spain and Italy), writing with particular gusto of the exploits of *Il Duce* in which he bore a share. The vivid recital, enlivened by flashes of wit, makes fascinating reading. Unhappily, even if the author's general thesis be conceded, he so often misconceives or misrepresents situations, and indulges generally in so many inaccuracies, that the book becomes a disappointment before one has progressed far through it. It greatly oversimplifies the "art" of revolution; it ignores circumstances which in many European countries, even in these days of economic crisis, make revolution, and even dictatorship, impossible; and with a cocksureness that never falters it deals out to European governments and peoples a fund of advice that, to put it mildly, is wholly gratuitous.—FREDERIC A. OGG, University of Wisconsin.

The Causes of War, by Sir Arthur Salter, Alfred Zimmern, Wickham Steed and others (edited by Arthur Porritt; New York, The Macmillan Company, 1932; xxix, 235 pp. $1.50), contains the reports of the various chairmen of sections of the first commission of the recent World Conference for International Peace through Religion which discussed the causes of war and the tendencies which make for war. As might be expected, the discussions and findings are presented in such concentrated form that the reader gets about the same reaction as he would in perusing a standard encyclopedia. The question might well be raised whether the value of such conferences does not lie rather in the stimulation of discussion and exchange of views in the quickening of spirit rather than in the effectiveness of the reports or resolutions which emanate therefrom. The causes of war are considered from the standpoint of economic, racial, press and propaganda, industrial and political problems. Sir Arthur Salter finds the greatest economic danger in the use of the power of government to deflect the course of trade between one country and another, and what is most needed is effective world agreement as to the principles which should guide governments in their actions affecting the economic interests of other countries. Mr. G. A. Johnston has a stimulating study of the importance of industrial and labor influences in causing war and finds the Manchurian problem essentially due to the development of industrialism in Japan. He sees a vital need for measures to secure

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greater equilibrium between the world's powers of consumption and its capacity to produce. Racial and religious influences are discussed by C. F. Andreas, H. A. Atkinson and A. Yusuf Ali. The latter finds that Hinduism and Islam are not so antagonistic as to be regarded as a likely cause of war. "It is not science that is to blame," declares Sir J. A. Thomson, "but our imperfect human nature that uses knowledge for evil purposes." Alfred Zimmern finds that culture becomes a cause of war when the representatives of a superior culture, possessing also superior power, employ that power to impose their culture upon an inferior party. Frederick J. Libby feels that the press can be utilized as a decisive influence for either war or peace. A government-owned or controlled press, subjected to a close censorship and manipulated for political purposes, is a grave danger. Wickham Steed, discussing the political causes of war, finds the feeling of insecurity and the fear it engenders as the strongest potential cause for war today, and it can only disappear when international law is strong and known to be strong. The book has three excellent supplementary articles: National Monopolies of Raw Materials by Jacob Viner; Tariffs by André Siegfried; and Migration by Moritz Bonn. The volume should be on the reference shelf of every library.—GRAHAM H. STUART, Stanford University.

Professor T. E. Gregory has performed a substantial service in putting together his little volume on *The Gold Standard and Its Future* (New York, E. P. Dutton & Co., Inc., 1932; viii, 115 pp. $1.50). Perhaps the best section of the book, and one which is likely to be of enduring usefulness to teachers, is the first two chapters. In them Professor Gregory gives an admirable brief account of the (more or less idealized) "normal" working of the gold standard, and of the modifications which have been forced upon it in the twelve years since the war. Then he presents the main facts in the chain of events which led up to the abandonment of the gold standard by Great Britain in 1931, and in the situation created by the breakdown itself. Here his chief service is to help dissipate the cloud of rumor and misinterpretation which still surrounds that episode. In the last chapter, he outlines his own view of the best future action for Great Britain—which is a return to gold at an earlier rather than a later date, and at a level substantially higher than much newspaper discussion in England has recently advocated. In passing, the reviewer may be permitted a mild protest at one matter which is presumably to be laid at the door of the publishers alone. The

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wrapper of the book presents three arresting questions, to each of which everyone would like to know Professor Gregory's reply. To none of them is an answer given in the book itself.—JAMES W. ANGELL.

A condensation of the National Industrial Conference Board's 1929 work on general sales taxes, plus some recent data on such levies and a chapter concerning taxes on selected commodities, is offered in the Board's *Sales Taxes: General, Selective, and Retail* (New York, National Industrial Conference Board, Inc., 1932; ix, 79 pp. $2.00). No conclusion is reached as to the desirability of sales taxes in this country at the present time. Most of the book consists of either factual material concerning existing taxes, or the statement of some of the arguments pro and contra. The compression of the subject into seventy-odd pages has not been done with the extreme care necessary for such a difficult task. As a result, the reader is likely to receive an erroneous impression from some parts of the book, particularly those wherein arguments for and against a tax are stated briefly and with no attempt at critical evaluation, or where not enough trouble and space have been taken to avoid loose statements. "An advantage claimed for a retail sales tax is the collection near the consumer, which reduces to a minimum the carrying charges of the previous producers and sellers" (p. 58). The interest burden, however, is merely shifted to other groups. "It has been argued by some that the enactment of a sales tax of a general nature in a period of falling prices and general business stagnation might stimulate the demand for goods, causing prices to turn upward . . . " Claims and arguments such as these, if they are to be stated at all, should be accompanied by at least a minimum of critical comment. The statement that "the one unquestioned advantage of a general sales tax is its productivity" (p. 13) means little without an indication as to what other levy is being used as a basis of comparison, or as to what standards of "productivity" are implied. The statement as to the "similarity in the economic conditions of the United States and Canada" (p. 8) contrasts with the emphasis elsewhere (p. 24) on "certain differences in industrial conditions in the two countries". The present reviewer cannot agree with the reasoning leading to the conclusion that, because the sales tax is supposed to be shifted, a taxpayer will not have as much incentive to evasion as he would if the levy were a non-shiftable income tax (p. 30). The above samples are perhaps sufficient to indicate the pitfalls that await anyone attempting to cover a large

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part of the tax field in a brief book without either avoiding all technical details or treating them in such an incomplete way that the average reader is in danger of misinterpreting them. — CARL SHOUP, Columbia University.

Banking, by Frederick A. Bradford (New York, Longmans, Green and Company, 1932; viii, 499 pp. $3.00), is a companion volume to the author's book on *Money* published in 1928. Each of these two volumes is intended to provide material for a semester course in college, or the two taken together are designed to provide textbook material for one year of work in the field of money and banking. The first chapter of *Banking* is devoted to a discussion of the nature and functions of banking. The primary function of banks "in the economic system is to effect a distribution of surplus funds into productive channels" (p. 11). Special attention is given to an explanation of the banking process including a treatment of deposits, loans and discounts, investments, reserves including secondary reserves and the interrelation of deposits, reserves and loans. In discussing the question of the origin or genesis of deposits and loans, the author follows closely the lines laid down by Phillips in *Bank Credit*, to the effect that the loans of the individual bank grow out of deposits while those of the banking system as a whole are the reverse. Unfortunately no attempt is made to differentiate between the so-called shiftability theory of credit and the liquidity of credit. Secondary reserves may be invested in long-term securities. Professor Bradford says specifically, "Long-term investment bonds are not self-liquidating but acquire liquidity for the individual banker through their salability" (p. 217). He adds further, "As regards liquidity, then, such investments are quite satisfactory". Foreign Exchange and the Federal Reserve System are briefly outlined. Interesting chapters are included on Recent Banking Changes and on Bank Earnings and Expenses, the latter of which has been, heretofore, sadly neglected by most texts on banking. Non-commercial banking functions such as trust business, agricultural credit and investment banking are included, but mutual savings banks are passed over lightly as are other institutions which should be considered in a general course in banking. The book ends with a short chapter on International Banking Relations, dealing primarily with the Bank for International Settlements. The subject is clearly presented, though some will disagree with the order of presentation. It is up-to-date and has a "freshness" about it that is lacking in many of the texts in this field. While there is nothing essentially new in the content

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or method of treatment it is distinctly worth while. Mr. Bradford's discussion should prove to be of very considerable value in the teaching of banking. It will be welcomed by many teachers of the subject who are seeking a condensed up-to-date text suitable for the orthodox course in which one semester can be devoted to the field of banking. —JOHN M. CHAPMAN, Columbia University.

A recent contribution to the literature of social pathology is *Homicide in the United States* (Chapel Hill, The University of North Carolina Press, 1932; x, 249 pp. $2.50) by H. C. Brearley. The author has ably demonstrated the importance of the homicide problem in this country. No less clearly, but probably with less intention, he has shown how woefully weak is our knowledge of the subject. His technique is primarily that of synthesizing the work of others. Although he quotes a wealth of conjecture, opinion, theory and data in the field, he fails to find much that throws conclusive light on any phase of the problem. Brearley has made the very most of the documents available but the material he is forced to use is sadly lacking in scientific value. The reasons are not far to seek. Data are phenomenally poor and the problem is infinitely complex. The reviewer is inclined to add that the propensities and training of most of those who have been studying the problem are emotional rather than scientific. In the main Brearley has handled his presentation admirably. However, on at least three points he is open to criticism. He seldom gives the absolute data on which his rates are based; yet these are indispensable to any judging of the relative dependabilities of those rates. He nowhere gives rates standardized for such factors as age and sex, though he recognizes the importance of standardization and on at least one occasion resorts to partial correlation as a means toward minimizing the effect of complicating variables. In spite of cautionary statements his treatment of race as a factor in the homicide problem is such as to lead most readers to use homicide rates for Negroes and whites as indices of relative criminality. Yet since specific rates are based upon the color, nationality or sex of *victim* rather than of aggressor, they can, except by implication, have little bearing on the criminal tendencies of any class. While this is expressly stated (pp. 100-102), yet in the pages that follow as well as in those that precede the statement they are used in this erroneous fashion. The volume constitutes a splendid point of departure for future careful and thorough scientific study of the problem and will be useful for many years as an excellent summary of our present theories.—FRANK ALEXANDER ROSS.

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Professor Pitman B. Potter's *A Manual Digest of Common International Law* (New York and London, Harper & Brothers, 1932; xx, 284 pp. $2.50) consists of an autobiographical Preface and five Parts, Theory, History, Law, The Future and Documents (containing draft codes and legislative treaties). The heart of the book is Part C, in which the author presents a code of international law (Peace and War) in 274 articles. These articles are stated in accordance with a purpose expressed in the Preface: ". . . even if the writer intends to proceed to express later his view as to what international law and international practice should be", his primary task is "to state the law as he believes it to exist at the given time." The present reviewer, intrigued by his work in the Harvard Research in International Law, used Mr. Potter's book in a summer school class at Columbia University. As a result, he is convinced that the method is excellent, provided that there is plenty of time, and provided that the students have originality and the ability to do independent research. Professor Potter presents his own ideas, in the text, in his usual original and aggressive fashion; it may be noted that the students found such concepts as volitional law perplexing. Any reader would doubtless disagree with many of the articles as stated; this is exactly what makes the method of value. It may be suspected that Professor Potter devoted much attention to framing and phrasing these articles; close study of many of them reveals meanings which are not apparent on the surface. If some are vague, it may be retorted that so is the law; if the law is backward, the phraseology often opens a way out. This reviewer knows no better means of seeking the inner meaning of a rule than trying to state it in precise words. For that reason, and with properly prepared students, the *Manual Digest* offers a stimulating method of studying international law.—CLYDE EAGLETON, New York University.

Professor Herbert Eugene Bolton's *Outpost of Empire: The Story of the Founding of San Francisco* (New York, Alfred A. Knopf, 1931; xxi, 334, xvii pp. $5.00) is a notable book, whether viewed from the standpoint of historical scholarship, geography or literature. The first two chapters are a forceful appreciation of the contribution of Spain and Portugal — especially of Spain — to American civilization. It should lay forever the smug Nordic assumption that only the English were successful colonizers. The next three chapters are a summary of Spanish colonization, converging upon California, where settlements were effected at San Diego, Monterey and San Gabriel in 1769-73. Chapter vi intro-

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duces the subject of the book—which does not appear in the title. The founding of San Francisco was an incident. It does not particularly interest the author, and it will not interest the reader. The real theme of the book is the little matter of two years in the life of Captain Don Juan Bautista de Anza in the service of King Carlos III. In 1772 Anza was commander of a frontier garrison in northern Sonora. He conceived the idea of opening a road across the desert to California and thereby establishing an all-land connection between Mexico and the new missions at San Diego and Monterey. The viceroy authorized him to undertake the task; and, when he succeeded, commissioned him to lead a company of some two hundred men, women and children to California for the founding of San Francisco. The book tells the story of these two expeditions—1774-1776. Professor Bolton admires Anza and paints his portrait with photographic clearness, using for the basis of his narrative the diaries of Anza and of the priests who accompanied him. The narrative is in effect a composite diary, somewhat idealized and written with consummate skill, combining Anza's journal, the diaries of the priests and the author's own observations into a day-by-day record of the march. It is this method which gives the book its peculiar interest. It has the inherent fascination of all veracious tales of travel; and here there is the double charm of two parallel explorations, one by Anza nearly a hundred and sixty years ago and the other by Bolton just the other day. Historically, the volume is another impressive testimonial to the author's thorough and comprehensive acquaintance with the voluminous manuscript records of Spain's frontier administration from Georgia to California. For, in spite of its literary quality, no reader will doubt its meticulous fidelity to the documents—which, one may add, parenthetically, are published in another edition as a three-volume appendix to this study.—E. C. BARKER, University of Texas.

The sharp cleavages of religious and political subjection which the sixteenth century witnessed brought forth a series of political tracts on the unceasing problem of political obligation, tracts in which, in the name of religion, a challenge was flung to the ideas of sovereignty dominant in the earlier part of that century. One of these tracts is Christopher Goodman's *How Superior Powers Ought to Be Obeyd,* now reproduced from the edition of 1558 by the Facsimile Text Society (New York, Columbia University Press, 1931; 234 pp. $3.00). The choice is a good one, for this work is eminently characteristic of the fierce controversies which were

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shaking and changing the age. The author, who was an exile in Geneva during the reign of Queen Mary, defends the right of disobedience and rebellion in a bitter polemic, highly documented with scriptural quotations. He breathes fire and slaughter against "the beastlie Bishoppe of Rome, with all his filthy dregges of damnation". He demands liberty of conscience, but only that all men may be subject and obedient to the precise forms of dogma which he himself believes. The work is on a much lower level of thought than such a landmark as the *Vindiciae contra Tyrannos*, but it is all the more illuminating of the clashes of mutual intolerance out of which some degree of precarious liberty emerged.—R. M. MacIver.

Those who are interested in the subject of the domestic injustices of war—the imposition of burdens, dangers and death upon one group and the maintenance of opportunities for profit to another—will find a mine of pertinent material in *Death and Profits: A Study of the War Policies Commission* (New York, Brewer, Warren & Putnam, 1932; ix, 156 pp. $1.50) by Seymour Waldman. This excellent volume sets forth the aims of the universal draft in bold relief against the puny accomplishments of the War Policies Commission. Following the war, a strong sentiment was naturally expressed by ex-service men for a law which, in the event of war, would draft dollars as well as men and which would prohibit both profits to capital and high wages to labor. The American Legion bill for the drafting of all men of suitable age without exemption on account of industrial occupation and for the placing of the necessary industrial organizations and services under the control of the president in times of national emergency was placed before Congress in 1922 and a similar bill was introduced in 1924. The bills were never reported out of committee. The principle of the universal draft has been approved by both political parties. But the accomplishments to date have been practically nil. A joint resolution was passed by Congress in 1930 for the investigation of the subject in order "to promote peace and to equalize the burdens and to minimize the profits of war." A commission was created to study the matter, but the resolution, thanks to organized labor, provided that the conscription of labor should not be considered. The commission soon forgot all about the promotion of peace and began to consider rather the mobilization of all resources in case of war. The author attended all of the hearings of the commission and tells the story of what happened. The commission was constantly confronted with the clause in the Fifth Amendment which prohibits the taking of private

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property for public use without just compensation. The fear of upsetting industry by restricting its profits unduly was likewise played upon. Major General Douglas MacArthur, Chief of Staff of the United States Army, suggested a profit of six per cent. Commander O'Neil of the American Legion placed the figure at seven per cent and other Legion officials came out for "a reasonable profit". In its final report, the commission recommended "that no constitutional amendment to permit the taking of private property in time of war without compensation be considered by Congress." The commission suggested the adoption of methods of stabilizing prices and restricting excess profits of individuals and corporations by a tax of ninety-five per cent upon all income above the previous three-year average. This, the author reasonably holds, does not remove the fundamental injustice of the conscription of soldiers while profits are permitted to corporations and high wages are allowed to labor. He feels that the rank and file of the American Legion were betrayed by their leaders. The book is a valuable revelation of the failure of the commission to apply what many people regard as elementary standards of justice.—BENJAMIN H. WILLIAMS, University of Pittsburgh.

Under the title *Progress in International Organization* (published for the University of Idaho by the Stanford University Press, Stanford University, 1932; ix, 162 pp. $1.50) Professor Manley O. Hudson has published the lectures delivered by him at the University of Idaho in 1931 on the William Edgar Borah Foundation for the Outlawry of War. To the text of the lectures have been added brief footnotes and an appendix including the Covenant of the League and the Statute of the Permanent Court of International Justice. With a rapid sketch of international organization before 1914 as a background, Professor Hudson presents a brief, comprehensive, but non-technical outline of postwar developments in this field. His survey of the machinery of the League is admirable, especially that of the structure and functions of the Secretariat, with which he has been closely associated. His chapter on the Permanent Court of International Justice reveals satisfaction with its work and faith in its continued and increasing usefulness. Most unbiased students of the Court will undoubtedly agree with him in his defense of its advisory opinion jurisdiction, despite the considerable body of sentiment in the United States against it, and in his emphasis upon the importance of the adoption, by a number of the Great Powers, of the optional clause conferring compulsory jurisdiction over cer-

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tain disputes of a legal nature. While conceding the moral significance of the Pact of Paris as a declaration of policy, he is skeptical as to its practical value because it is unimplemented, and also because it leaves the signatories free to judge for themselves whether circumstances justify resort to war in self-defense, no effective test of aggression having as yet been devised. He rightly stresses the significance of the numerous postwar treaties dealing with arbitration and conciliation, and of the development of international law through the exercise of the treaty-making function, the adjudications of the Permanent Court and the movement for progressive codification. With his vigorous indictment of certain aspects of American foreign policy relative to international organization many informed readers will agree; at any rate it is highly suggestive. This little volume makes no pretense of being a detailed or critical study of international organization; but as a comprehensive and authoritative review of the subject it will be found valuable to the general reader as well as to the student of international affairs.—EDMUND C. MOWER, University of Vermont.

Each succeeding edition of that useful compendium of taxation—*Federal and State Tax Systems*, issued by the Tax Research Foundation (3d ed., Chicago, Commerce Clearing House, Inc., 1932; 145 pp.)—marks a forward step toward the difficult goal to which it aspires. The publication is a monument to the industry and devotion of that able public servant, Mr. Mayne S. Howard, head of the research division of the New York State Tax Commission. Through the coöperation of numerous educators and tax officials, Mr. Howard is able to present in chart form the main characteristics of the tax systems of the forty-eight states, of Alaska, Hawaii and the District of Columbia, and of twenty-three foreign states and countries. In addition the volume contains thirty-eight "status tables", which collate the data relating to particular aspects of taxation from the various states affected. In its steady progress toward complete accuracy and comprehensiveness this edition marks a distinct step forward. It is to be hoped that facilities will soon be made available which will enable Mr. Howard to include in his foreign charts such important nations as England, France, Italy and Russia.—ROBERT MURRAY HAIG.

To John W. Wheeler-Bennett's highly useful "Information Series", dealing with outstanding postwar international problems, there has been added a seventh volume, entitled *Disarmament and Security since Locarno* (New York, The Macmillan Company, 1932;

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383 pp. $4.00). Dealing with the political and technical background of the General Disarmament Conference which met at Geneva in 1932, the work combines the topical and chronological treatment by considering separately the subjects of disarmament and security for the six years following the negotiation of the Locarno Pacts. The section on disarmament discusses the work of the Preparatory Commission from 1925 to 1930, the progress of naval disarmament from the Geneva Conference of 1927 through the negotiation of the Aegean and Black Sea pacts of stability of 1930-1931, and such miscellaneous disarmament proposals as those of Russia, made in 1928-1929, and of Turkey and China, made in 1930. The pages on security deal with the steps toward the renunciation of war, including the Pan-American resolutions of 1928, the Paris Pact, the Litvinov Protocol, and the efforts to bring the Paris Pact and League Covenant into harmony. There are excellent sections on the work of the League's Security and Arbitration Committee and on the various neutrality and non-aggression treaties which were signed during the period under consideration. A description of conditions in the year 1931 completes the body of the work. The value of the book as a reference volume is much enhanced by the inclusion of an excellent summary of the various national attitudes on disarmament, the text of the Draft Disarmament Convention, and a chronological table showing the relation between disarmament, security, arbitration and reparation from 1925 to 1931.—WALTER C. LANGSAM, Columbia University.

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